Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

Dale "J.R." Heidbreder,

Petitioner,

v.

Kathleen Jean Carton, aka Katie Carton, aka Kate Carton, and,

Respondents,

M.J.P. and M.B.P.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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134 pp

QUESTIONS PRESENTED

1. Whether provisions of Minnesota Statutes which define the manner in which a putative father must act to preserve his right to object to the adoption of his child unconstitutionally impinge on his constitutionally protected right to be a father to his child by denying him due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

2. Whether provisions of Minnesota Statutes which define the manner in which a putative father must act to preserve his right to object to the adoption of his child unconstitutionally impinge on his constitutionally protected right to be a father to his child by denying him equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

PARTIES TO THE PROCEEDING

The following individuals are parties to the proceeding in the court below:

Dale "J.R." Heidbreder – Plaintiff/Appellant

Kathleen Jean Carton, aka Katie Carton, aka Kate Carton – Defendant/Appellee

M.J.P & M.B.P – Intervenors/Appellees

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari be issued to review the judgment of the Minnesota Supreme Court in this case.

OPINIONS BELOW

The decision of the Minnesota Court of Appeals is reported at 636 N.W.2d 833 (Minn.App. 2001). The decision of the Minnesota Supreme Court is reported at 645 N.W.2d 355 (Minn. 2002).[1]

JURISDICTION

The final judgment and decree of the Minnesota Supreme Court was entered on June 13, 2002. This Court has jurisdiction under 28 U.S.C. §1257(a).

NOTICE TO MINNESOTA ATTORNEY GENERAL

28 U.S.C. §2403(b) may apply and notice has been given to the Minnesota Attorney General's Office as required by Rule 29.4(c). Pursuant to 28 U.S.C. §2403(b) the Minnesota Supreme Court certified that the constitutionality of a statute of the State of Minnesota was drawn into question.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(A) The Fourteenth Amendment to the United States Constitution provides in relevant part as follows:

"No State * * * shall deprive any person of life, liberty,

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[1] Minnesota has three judiciary levels: the District Court; the Court of Appeals; and the Minnesota Supreme Court, its highest court.

or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [U.S. Const. amend. XIV, §1.]

(B) Minn. Stat. §259.49 (Notice, hearing on petition [to adopt]) provides:

"Subdivision 1. To whom given. Except as provided in subdivision 3, and subject to section 259.52, notice of the hearing upon a petition to adopt a child must be given to:

(a) the guardian, if any, of a child;

(b) the parent of a child if:

(1) the person's name appears on the child's birth record, as a parent;

(2) the person has substantially supported the child;

(3) the person either was not married to the person designated on the birth record as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;

(4) the person is openly living with the child or the person designated on the birth record as the natural mother of the child, or both;

(5) the person has been adjudicated the child's parent;

(6) the person has filed a paternity action within 30 days after the child's birth and the action is still pending;

(7) the person and the mother of the child have signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked or a

recognition of parentage under section 257.75, which has not been revoked or vacated; or

(8) the person:

(I) is not entitled to notice under clauses (1) to (7);

(ii) has registered with the fathers' adoption registry;

(iii) after receiving a fathers' adoption registry notice, has timely filed an intent to retain parental rights with entry of appearance form under section 259.52; and

(iv) within 30 days of receipt of the fathers' adoption registry notice has initiated a paternity action, unless, for good cause shown, he is unable to do so within the 30 days; a paternity action must be initiated by the putative father in district court; application to the public authority for paternity establishment services does not constitute initiation of an action; and

(c) the child's tribe pursuant to section 260.761, subdivision 3, if the child is an Indian child.

Notice under this section need not be given to a person listed in this subdivision whose parental rights have been terminated. The notice of the hearing may be waived by a parent, guardian, or other interested party by a writing executed before two competent witnesses and duly acknowledged. The waiver must be filed in the adoption proceedings before the matter is heard.

Subd. 2. Service. Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, in the manner provided by law for the service of a summons in a civil action. If personal service cannot be made, the court may order service by publication.

The petitioner or petitioner's attorneys shall make an affidavit setting forth the effort that was made to locate the parents, and the names and addresses of the known kin of the child. If satisfied that the parents cannot be served personally, the court shall order three weeks published notice to be given, the last publication to be at least ten days before the time set for the hearing. Where service is made by publication the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court shall consider that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. Service, guardian only. Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents". [Minn. Stat. §259.49]

(C) Minn. Stat. §259.52 (Putative Father's Adoption Registry), provides in relevant part:[2]

"Subdivision 1. Establishment of registry; **purpose**; fees. (a) **The commissioner of health shall establish a fathers' adoption registry for the purpose of determining the identity and location of a putative**

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[2] Pursuant to Supreme Court Rule 14.1(f), the entire statute is reprinted at App A-85.

father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry. (emp. added)

Subd. 6. Who may register. Any putative father may register with the fathers' adoption registry. However, any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7).

Subd. 7. When and how to register. A putative father may register with the department of health before the birth of the child but must register no later than 30 days after the birth of the child. Registrations must be in writing and signed by the putative father. A registration is timely if the date the registration is postmarked or the date it was delivered by means other than mail to the

address specified on the registration form is not later than 30 days after the birth of the child.

Subd. 8. Failure to register. Except for a putative father who is entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7:

(1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 260C.301, subdivision 1.

A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear and convincing evidence that:

(i) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within ten days after it became possible

for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." [Minn. Stat. §259.52, subd. 1, 6, 7, 8]

STATEMENT OF THE CASE

Petitioner, Dale "J.R." Heidbreder, ("J.R.") brought this action on October 11, 2000, in Stearns County, Minnesota District Court, against Kathleen Jean Carton ("Katie"), *In Re the Matter of Dale "J.R." Heidbreder and Kathleen Jean Carton, aka Katie Carton, aka Kate Carton, File No. 73-F8-00-052159,* seeking a determination of the paternity of his daughter, K.M.C., who was born to Katie; seeking to enjoin any adoption proceedings pertaining to his daughter; and, seeking a judgment declaring that his registration with the Minnesota Fathers Adoption Registry was proper.

M.J.P. and M.B.P., the prospective adoptive parents of K.M.C., brought a motion to intervene into the Stearns County action. On December 14, 2000 Judge Richard Jessen granted their motion.

On January 22, 2000 the Minnesota District Court heard a motion by the Intervenors to dismiss J.R.'s petition. On March 5, 2001 Judge Richard Jessen, treating the motion as one for summary judgment, issued an order dismissing J.R.'s paternity action. The matter was submitted on affidavits and deposition transcripts.

On April 26, 2001 J.R. filed an appeal with the Minnesota Court of Appeals, *Dale "J.R." Heidbreder vs. Kathleen Jean Carton, aka Katie Carton aka Kate Carton, and M.J.P., et al., C0-01-739.* On December 11, 2001 Chief Judge Toussant affirmed the decision of the Minnesota District Court.

On January 10, 2002 J.R. sought review of the decision of the Minnesota Court of Appeals by the Minnesota Supreme Court. Review was granted by order of the Minnesota Supreme Court on February 19, 2002. On June 13, 2002 the Minnesota Supreme Court affirmed the decision of the Minnesota Supreme Court on a 4-3 vote. The decision of the Minnesota Supreme Court in now being presented to this Court for review.

J.R. first raised due process and equal protection challenges under the Fourteenth Amendment to the United States Constitution in a January 10, 2001 Memorandum of Law in Stearns County Minnesota District Court, in response to the Intervenors' motion to dismiss, arguing that his interest in his daughter was a sufficient private interest, quoting *Lehr v. Robertson*, 463 U.S. 248, 256, 103 S.Ct. 2895, 1991 (1983):

> "The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty and flexibility. It is self-evidence that they are sufficiently vital to merit constitutional protection in appropriate cases."

J.R. noted that if a procedure under a putative father statute takes qualifications for notice "beyond the control of an interested putative father, it might be thought procedurally inadequate." *Id at* 264, 103 S.Ct. at 2994. The *Lehr* court indicated that if the questioned procedure were to allow a mother to engage in fraudulent practices to deprive a father of the opportunity to protect his rights, the procedure would violate the father's constitutional due process rights. *Id at* 265, 103 S.Ct. at 2995 n.23. J.R. cited numerous state decisions from other jurisdictions, and federal decisions, which recognized the constitutional protections afforded a putative father who is the victim of a mother's deceit, or a father who has attempted to

assert his parental rights, in the face of notice statutes such as the Minnesota Registry statute. See, i.e. *In Re Adoption of Baby Boy Doe*, 717 P.2d 686, 688 (Utah 1983); *Ellis v. Social Services Department of the Church of Jesus Christ of Latter-Day Saints*, 615 P.2d 1250 (Utah 1980); *In Re Adoption of Baby Doe Dearing*, 98 Ohio App. 3d 197, 201, 648 N.E.2d 57, 60 (Ohio 1994); *In Re Adoption of Baby Girl Hudnall*, 71 Ohio app. 3d 376, 380, 594 N.E.2d 45, 48 (Ohio 1991); *Robert O. v. Russell K.*, 80 N.Y.S.2d 254, 261, 604 N.E.2d 99, 101, n.1 (N.Y. 1992); *In the Matter of Raquel Marie X.*, 76 N.Y.2d 387, 559 N.E.2d 418 (N.Y. 1990); and *Caban v. Mohammed*, 441 U.S. 380, 99 S.CT. 1760 (1979).

In response to J.R.'s constitutional challenges, the Minnesota District Court held that the "putative fathers' registry in Minnesota adequately protects all registered biological fathers' rights * * *" (citing the reasoning in *Lehr)* While the district court conceded that a putative father who registers late is *given an opportunity to register late and withhold his consent to the adoption of his offspring if he proves by clear and convincing evidence that it was not possible for him to register, and that the failure to register was through no fault of his own*, it nonetheless differentiated J.R.'s case from those cited from other jurisdictions (enumerated above), by concluding that life-long Iowa resident J.R. *could* have protected his parental rights and *would* have been entitled to notice if he *had* mailed the Minnesota registry form on time, implying that it was J.R.'s *ignorance* of the law, not the law itself, that prevented J.R. from timely registering.[3]

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[3] The district court ignored the fact that it was addressing a motion for summary dismissal which required it to give all factual inferences and benefits of the doubt to J.R. who had convincingly asserted that he did not know or reasonably believe that Katie was in Minnesota.

The district court asserted that the Minnesota Putative Fathers' Registry was "designed to strike a fine balance between protection of a new born child's interest of having [a] [sic] permanent home and the putative father's right to establish [a][sic] parent-child relationship with the newborn." It differentiated *Caban* and *Lehr* from J.R.'s case by asserting that J.R. had never established a *custodial, financial or personal* relationship with his daughter, and that he was therefore not entitled to an application of equal protection.[4]

Pursuant to Rule 144 of the Minnesota Rules of Civil Appellate Procedure, J.R. notified the Minnesota Attorney General's Office on April 26, 2001 that he was challenging the constitutionality of the Minnesota Fathers' Adoption Registry Act (Minn. Stat. §259.52). In his appeal to the Minnesota Court of Appeals J.R. alleged that Minn. Stat. §259.52 violated the due process and equal protection afforded him under the United States constitution. The Minnesota Court of Appeals acknowledged that "while states are required to protect an unmarried father's interest in establishing a relationship with his child, they are also allowed to define the conduct in which the father must engage to assume a parental role in the child's life." Citing the Minnesota Supreme Court Foster Care & Adoption Task Force Final Report (Jan. 1997), the Minnesota Court of Appeals asserted that the registry:

> "(1) clarifies who must receive notice of an adoption proceeding; (2) expands a putative father's access to the adoption proceedings;[5] and (3)

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[4] The argument ignored the fact that J.R. never had an opportunity to establish a relationship with his daughter since Katie hid her location until she gave the child up for adoption a mere two days after her birth.

[5] The new statute actually restricted a putative father's ability to assert his rights by reducing the time frame to register from 60 days to 30 days.

ensures that adoptions, once finalized, remain undisturbed."

Further, it *balances the important issues at stake*, satisfying the requirements of due process.

The Minnesota Court of Appeals dismissed the equal protection challenge by asserting that the disparate treatment of mothers and fathers is *legitimately tied to 'the existence or nonexistence of a substantial relationship between the parent and child'*. (Citing, *Lehr*, 463 U.S. at 266, 103 S.Ct. at 2996). Further, that:

> "Carton carried the child, but Heidbreder never established any custodial, personal or financial relationship with the child [6]" and therefore his equal protection rights were not violated."

Finally, J.R. raised the due process and equal protection challenges in his petition for certiorari to the Minnesota Supreme Court on January 11, 2002 and in his brief to the Court on March 12, 2002. The Minnesota Supreme Court held that

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[6] That position begged the question as Katie's deceit prevented J.R. from establishing a custodial, personal or financial relationship with his daughter. There is nothing in the record to dispel J.R.'s assertion that but-for Katie's deceit, he would have established a full relationship with his child.

"the mere existence of a biological connection between a child and a putative father does not confer due process protection on the putative father's parental interests, (Citing, *Lehr*, 463 U.S. at 260-61, 103 S.Ct. 2985 (citing *Caban v. Mohammed,* 441 U.S. 380, 397, 99 S.Ct 1760, 60, 60 L.Ed. 297 (1979)) It further held that a putative father's interest in knowing his child is entitled to due process protection only when the father "demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child.' " (Citing, *Lehr,* 463 U.S. at 261, 103 S.Ct. 2985 (quoting *Caban*, 441 U.S. at 392, 99 S.Ct. 1760)) The Court (Citing, *Lehr*, at 463 U.S. 262, 103 S.Ct. 2985), concluded its analysis by implying that the *only* way a putative father can demonstrate the required *commitment* to the responsibilities of parenthood was by showing a 'significant custodial, personal or financial relationship' with the child."

The Minnesota Supreme Court held that J.R. was not entitled to due process protection solely on the basis of the above analysis, finding that J.R. had not demonstrate a *significant custodial, personal or financial relationship* with his daughter.[7] The Court opined that the statutory scheme identified in the *Lehr* decision was *almost identical* to that found in Minnesota, stating that the only *major* factual distinction was J.R. was not a resident of the State of Minnesota. It also found that it was not reasonable for J.R. to rely exclusively on the provisions of Iowa law to protect his interests.[8]

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[7] Following the same reasoning that the Court of Appeals used to dismiss J.R.'s equal protection argument.

[8] The Court did not explain why it was not reasonable for lifelong Iowa resident J.R. to rely on Iowa law (which would have required Katie to seek his consent to place his daughter for adoption) or recognize that 19 year old J.R. was acting on the advice of an Iowa attorney. Furthermore, registering with the Iowa Declaration of Parentage Registry would not have been a defense to the Minnesota action.

Similarly, the Minnesota Supreme Court dismissed J.R.'s argument that there was a violation of equal protection. The Court reiterated that J.R. had not had an *established relationship* with his daughter, nor did he avail himself of the opportunities provided to him to establish such a relationship, resulting in a situation where they were not similarly situated.[9]

A. The Nature of the Case.

J.R. Heidbreder and Katie Carton were born and raised in Iowa. They became involved in a relationship while Katie was still in high school, which resulted in Katie conceiving their child. They moved in together after it was learned that Katie was pregnant, and resided together in an apartment in Fort Madison, Iowa until the seventh month of Katie's pregnancy.

During the early stages of pregnancy J.R. and Katie had numerous discussions regarding their options. J.R. was adamant about not given his child up and equally adamant that he would not support an abortion. Katie agreed that she would not abort the child or give the child up for adoption.

During Katie's pregnancy J.R. assumed financial responsibility for the lease on the apartment that he and Katie

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[9] The Court's analysis did not take into consideration the fact that Katie intentionally fled Iowa to go to Minnesota (a state which coincidentally terminates the rights of the highest percentage of parents in the country); intentionally failed to list J.R. on the birth certificate; enlisted many family and friends to keep her location secret; and waited until after the 30 day period had run to disclose her location.

resided in, and talked to Katie about putting her name on his checking account; however, she declined. Together they shared the costs of food and groceries, and J.R.'s mother and family brought them maternity clothing for the yet to be born child. J.R. also attended Katie's pre-natal medical appointments.

Less than two months prior to Katie's due date she abruptly moved out of their apartment, without telling J.R. her intentions and without telling J.R. where she had gone. She moved to Minnesota. For a short time she lived with her grandparents, and then moved into a home for unwed pregnant teenagers. J.R. made many attempts to try to locate Katie without success. He and his family talked to Katie's family members and friends in an attempt to learn her location. Katie's friends and family lied about Katie's whereabouts, telling J.R. that they didn't know where she was, when in fact they knew she was in Minnesota. Katie *e-mailed* J.R. and provided him with her *e-mail* address; however, despite his pleas, she refused to tell him where she was.

Although he was only 19 years old J.R. sought out the advice of an Iowa attorney in his hometown, in an effort to protect his parental rights. He discussed setting up child support payments and his visitation rights. Believing that Katie would not place his daughter for adoption (due to her prior promises), and on the advice of the Iowa attorney,[10] he did not pursue a paternity action in Iowa. His attorney advised him that he did not know where to file such an action because they

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[10] J.R.'s attorney advised him that Iowa law required Katie to seek his consent if she attempted to place his child for adoption. The Iowa father's registry is discretionary and provides a mechanism for fathers who *wish* to register. Iowa Code §144.12A(2)(a). There are no sanctions for failing to register as Iowa law requires 20 day notice of adoption proceedings to be served on a putative father, and that a putative father be given an opportunity to be heard. Iowa Code §600.11(2)(a).

did not know where Katie was. J.R. and his attorney therefore decided to wait until they could locate Katie.

J.R. did not believe that Katie was in Minnesota, for a number of valid reasons. While Katie's divorced mother had decided to move to Minnesota with Katie's younger siblings, she had not moved at the time of Katie's disappearance. Katie and her mother were not on good terms and Katie had told J.R. that she would never move to Minnesota. Knowing that Katie was close to her siblings, J.R. had offered to obtain a job in Minnesota so that Katie could be around her siblings after their child was born. Katie specifically declined, telling J.R. that she would "never ever move with her mom." Katie also told J.R. that she was estranged from her grandparents in Minnesota and that no one there would accept her pregnancy.

Unbeknownst to J.R., Katie had contacted an adoption agency in Minnesota. Katie advised the representative from the agency that she knew that J.R. would not agree to give their child up for adoption. The representative counseled Katie that if she omitted J.R.'s name from the birth certificate he would not be able to stop the adoption unless J.R. registered with the Minnesota Fathers' Adoption Registry within 30 days of his daughter's birth. At the direction of the agency Katie decided to keep her location a secret and to have her family and friends keep it a secret until 31 days after her child's birth.

Katie gave birth on August 12, 2000. As per the instructions of the adoption agency she did not list J.R.'s name on the birth certificate, and had J.R.'s daughter placed two days later with prospective adoptive parents.

Exactly thirty-one days after J.R.'s daughter's birth, J.R. learned from one of Katie's friends that she had given birth and that she was in Minnesota. That same day J.R. found a

website on the Internet for the Minnesota Fathers' Adoption Registry, followed its instructions, and immediately registered.

It has now been more than two years since his daughter's birth, and J.R. has yet to either see her or be with her.

B. The Proceedings Below.

J.R. commenced an action in Minnesota to determine his paternity within 30 days of his learning of his daughter's birth. His daughter's prospective adoptive parents intervened and moved to summarily dismiss. Stearns County, Minnesota District Court Judge Richard T. Jessen granted the prospective parents' motion for summary judgment. On April 26, 2001 J.R. appealed to the Minnesota Court of Appeals. Chief Judge Toussaint affirmed on December 11, 2001. *Heidbreder v. Carton*, 636 N.W.2d 833 (Minn.App. 2001). J.R. appealed to the Minnesota Supreme Court. On June 13, 2002, by a 4-3 vote, Justice Russell Anderson held that (1) Iowa resident J.R. was barred by Minnesota law from maintaining a paternity action due to his failure to file with the Minnesota Father's Adoption Registry within thirty days of the birth of his daughter; (2) that fraudulent collusion to conceal Katie's location did not relieve J.R. of his obligation to register with the Minnesota Father's Adoption Registry; (3) that Katie's concealment of her location in Minnesota did not excuse J.R.'s failure to register within thirty days in Minnesota; (4) that Katie's statement to J.R. that she would "never ever" choose adoption did not amount to fraud as a matter of law; (5) that Katie had no fiduciary duty to disclose her location to J.R., even though Katie knew that J.R. was actively looking for her[11]; (6) that as a matter of first

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[11] The Minnesota Supreme Court "decline[d] to impose a fiduciary duty on an unmarried birth mother to disclose her location to the putative father **even if she knows he wants to know her location or establish a relationship with his child.**"(emph added). *Heidbreder v. Carton*, 645

impression, J.R.'s substantial compliance with the registration requirements of the law was insufficient to preserve his right to assert any interest in his daughter; (7) that J.R. lacked a constitutionally protected interest in his relationship with his daughter; and (8) that the statute adequately protected J.R.'s due process right to have an opportunity to form a relationship with his daughter.

In a scathing dissent, Justice Page, joined by Justice Gilbert, described the majority opinion as being *arrogant* and *hostile,* arguing that the majority's decision (1) improperly applied Minn. Stat. §259.52, subd. 8 (2000) to the facts of the case; and (2) as a result violated J.R.'s right to due process. Justice Paul Anderson also dissented, finding the majority's decision 'especially problematic for putative fathers who, with the most honorable intentions, seek to assert and fulfill their rights, duties and obligations'.

REASONS FOR GRANTING THE PETITION

I. The Questions Presented Involve Important Matters. There are compelling reasons why this Court should accept certiorari, including that the decision of the Supreme Court of the State of Minnesota conflicts with relevant decisions of this Court and that this case involves a matter of greatest importance - the constitutionally protected fundamental right of a parent to the care, custody and control of his child. Because the right of a parent to the care, custody and control of his child is perhaps the most basic fundamental right, any deprivation of that right must comply with the due process protections of the Fourteenth Amendment and survive equal protection scrutiny.

The general rule in Minnesota is that no child can be adopted without the consent of both of the child's natural

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N.W.2d 355, 368 (Minn. 2002).

parents. Minn. Stat. Sec. 259.24, Subd. 1. The rule is part of the intertwined statutory framework "governing a most important social relationship - that between a parent and a child." *In the Matter of the Paternity of J.A.V.*, 547 N.W.2d 374, 376 (Minn. 1996). That framework balances the best interests of the child with those of other interested parties, including the child's natural parents; *Id.* however, there is one key exception to the general rule: Consent is not required of a parent who is not entitled to notice under the laws of the State of Minnesota. Minn. Stat. §259.24, Subd. 1(a).

Under the exceptions to the notice requirements, a father's consent is therefore not needed regardless of the father's objection to an adoption and regardless of whether the father sought a relationship with his child or not; however, any such exception must be analyzed in the context of the longstanding precedent that "provisions abrogating the necessity of parental consent to adoption should be 'construed strictly in favor of the parent and the preservation of the [parent-child] relationship'." *In the Matter of the Welfare of A.M.P.*, 507 N.W.2d 616, 621 (Minn. Ct. App. 1993) (Citing, *In re Parks*, 267 Minn. 468, 474, 127 N.W.2d 548, 553 (Minn. 1964).

The stated purpose of the Minnesota Father's Adoption Registry is to *establish a fathers' adoption registry for the purpose of determining the identity and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice.* Minn. Stat. §259.52, Subd. 1. Any putative father (whose name does not appear on the child's birth certificate) who fails to register with the Registry within thirty days of the birth of his child, loses the right to notice of an adoption proceeding (and the right to object to the adoption of his child), unless he can demonstrate the existence of an

exception under Minn. Stat. §259.52, Subd. 8, which provides as follows:

> "Except for a putative father who is entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7[12]:
>
> (1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;
>
> (2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and
>
> (3) is considered to have abandoned the child.
>
> Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 260C.301, subdivision 1.
>
> A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear and convincing evidence that:
>
> (i) it was not possible for him to register within the period of time specified in subdivision 7;
>
> (ii) his failure to register was through no fault of his own; and

---

[12] Subdivision 7 requires a putative father to register within 30 days of the child's birth, specifically in the State of Minnesota.

(iii) he registered within ten days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register."

Under Minnesota law, every law shall be construed, if possible, to give effect to all its provisions. Minn. Stat. §645.16 (2000). In ascertaining the intention of the legislature the courts are guided by the presumption that the legislature does not intend a result that is absurd, impossible of execution, or unreasonable and the legislature intends the entire statute to be effective and certain. Minn. Stat. §645.17(1), (2) (2000).

The specific stated intention of Minn. Stat. §259.52 is to determine the identity and location of a putative father, who is *interested* in a minor child, when the child may be subject to an adoption proceeding. Instead of providing a putative father with notice of a pending adoption, the statute has established a bright-line cut-off point which prevents a willing putative father from exercising his rights, which is clearly contrary to the express language of the statute.

That being said, in construing Minn. Stat. § 259.52, the United States Supreme Court is bound by the construction given it by the Minnesota Supreme Court. *R.A.V. v. St. Paul*, 505 U.S. 377, 381 (1992). Accordingly, the United States Supreme Court must accept the determination by the Minnesota Supreme Court that under the statute a father who is actively attempting to enforce his parental rights is not entitled to notice to object to the adoption of his child, even though unbeknownst to the father the mother fled to Minnesota from the father's home state; and, the mother actively conspired with friends and family to keep her location secret, with the sole intention of depriving the father of his parental rights.

II. The Decision by the Minnesota Supreme Court Consists of Erroneous Factual Findings Which are not Supported by the Record and are the Result of a Misapplication of a Properly Stated Rule of Law.

The original judgment and decree of the Minnesota district court was treated as a motion for summary judgment, which by law required the court to view the evidence in a light most favorable to J.R., and which required all doubts and inferences to be resolved against Katie, and the prospective adoptive parents. All reasonable evidence put forth by J.R. should have been believed and all justifiable inferences should have been drawn in a light most favorable to him. *Appletree Square I LTD. v. W.R. Grace & Co.*, 815 F.Supp. 1266, 1270 (D.Minn. 1993).

On appeal from a summary judgment by the district court, the reviewing court is required to determine whether there are any material facts in dispute and whether the lower courts erred in their application of the law. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001). J.R. contended that it was not possible for him to timely register as his daughter's parent with the Minnesota Father's Adoption Registry, as he did not know that Katie was in the State of Minnesota. The Minnesota Supreme Court clearly ignored the nature of a summary judgment determination by ignoring J.R.'s reasonable assertion that he did not know Katie was in Minnesota and had no reason to believe that she was in Minnesota. The Minnesota Supreme Court concedes that:

> "[J.R.] asserts that it was "not possible" for him to register in Minnesota because [Katie] concealed her location and he did not know she was in Minnesota." *Heidbreder v. Carton*, 645 N.W.2d 355, 366 (Minn. 2002);

however, it ignored the inferences and claims which should have been afforded a litigant in a summary proceeding when it found:

> "it was not reasonable for [J.R.] to assume he could rely on Iowa law to protect his interests. * * * while [J.R.] did not know with certainty where [Katie] was, he had sufficient information to put him on notice that it was *possible* she was in Illinois or Minnesota." (Emp. added). *Heidbreder,* 645 N.W.2d at 375.

It was certainly reasonable to find that J.R. had no idea that Katie was in Minnesota. The same day that he found out she was in Minnesota, he registered in Minnesota. Furthermore, if Katie actually believed that J.R. knew she was in Minnesota she would not have continued to refused to disclose her location to him.

In the context of summary proceedings, J.R.'s assertion that he did not know and had no reason to believe that Katie was in Minnesota should have been accepted in toto by the Court. If the Court fully accepted those assertions, it would have had to conclude that it was not possible for J.R. to have registered within 30 days, thus entitling him to notice of the adoption proceedings under Minn. Stat. §259.52, subd. 8, and entitling him to have an opportunity to assert his rights.

III. The Minnesota Supreme Court's Decision Affirming the Dismissal of J.R.'s Paternity Action Conflicts with Other Decisions of the United States Supreme Court.

A. The Decision is Contrary to Holdings of this Court Pertaining to the Due Process Clause of the 14th Amendment to the United States Constitution.

There is no question that the parent-child relationship is

constitutionally protected. In discussing the 14th Amendment, this Court stated in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), that:

> "We have long recognized that the Fourteenth Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process'.* * * The liberty interest at issue in this case - the interest of parents in the care, custody and control of their children - is perhaps the oldest of the fundamental liberty interests recognized by this Court." (Citations omitted)

The *Troxel* Court went on to note:

> "It is cardinal with us that the custody, care and nurture of the child reside first in the parents * * *" (Citing, *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438 (1944))

and,

> "We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected." (Citing, *Parham v. J.R.*, 442 U.S. 584, 602 99 S.Ct. 2493 (1979))

The Minnesota Supreme Court relied heavily on the *Lehr* decision in support of its holding that Minn. Stat. §259.49 and §259.52 did not violate J.R.'s due process and equal protection rights; however, its logic ran directly counter to the holding in that case. As noted in *Lehr,* 463 U.S. at 256,

> "The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection

in appropriate cases."

The Minnesota Supreme Court attempted to justify its decision by calling the Minnesota and New York statutory schemes "almost identical" and by asserting that the only factual distinction was J.R. resided in another state. That analysis is dishonest and misplaced. The Minnesota Supreme Court based its decision solely on whether J.R. established a *custodial, personal or financial relationship* with his daughter, measures he was never given an opportunity to demonstrate. *Heidbreder*, 645 N.W.2d at 372. A close reading of *Lehr* reveals that analysis was not the concern of this Court. The *Lehr* majority noted:

> "In this case, we are not assessing the constitutional adequacy of New York's procedures for terminating a *developed* relationship. Appellant has never had any significant custodial, personal, or financial relationship with Jessica, and he did not seek to establish a legal tie until after she was two years old. *We are concerned with only whether New York has adequately protected his opportunity to form such a relationship.*" (emp. added).

Lehr, 463 U.S. 262-63, 103 S.Ct. 2985-6. The *Lehr* Court went on to discuss the most effective protection of the putative father's *opportunity* to develop a relationship with his child, stating:

> "Thus, New York has adopted a special statutory scheme *to protect the unmarried father's interest in assuming a responsible role in the future* of his child." (emp. added). *Id.*

In other words, the issue is whether the Minnesota statute adequately protected J.R.'s *opportunity* to form a

relationship with his daughter, not whether he actually *had* a significant custodial, personal or financial relationship with her, something that Katie rendered impossible by misrepresenting her intentions and fraudulently concealing her location. In actuality the Minnesota Supreme Court was not interested in whether or not J.R. wanted to establish a relationship with his daughter. That point is made clear by their refusal to impose a duty on a mother to disclose her location even when she knows that the father is attempting to establish a relationship with his child. *Heidbreder*, 645 N.W.2d at 368.

The facts which led to the majority's determination in *Lehr* bears little resemblance to J.R.'s case:

(1) J.R. attempted to assert his rights the same day he learned where his daughter was, 31 days after the child's birth. On the other hand, Lehr waited two years, and took no steps to assert his rights until an adoption proceeding was commenced;

(2) J.R. participated in pre-natal appointments with Katie. J.R. offered to place Katie on his checking account. J.R. stated that his money was Katie's money. J.R. obligated himself for the lease to the apartment that he and Katie shared. J.R. shared the costs and expenses of food and groceries for he and Katie. J.R.'s mother and family bought maternity clothes for Katie. J.R. never had an opportunity to provide *financial* support for his daughter after her birth. On the other hand, Lehr did nothing for two years, and despite knowing the whereabouts of his child, provided no financial support;

(3) J.R. never had an opportunity to seek *custody* of his daughter as she was placed for adoption two days after her birth (to strangers), twenty-nine days before J.R. even knew where Katie was. On the other hand, Lehr knew where his child was from the date of her birth, visiting the mother at the hospital, and, Lehr's child was adopted by the mother's husband, a

person Lehr didn't bother to acquaint himself with. (See, *Lehr*, 463 U.S. at 262, 103 S.Ct. 2985, n.19, which implies that there is a stronger right afforded a father to object to adoption by strangers);

(4) J.R. never had an opportunity to have a *personal* relationship with his daughter since Katie hid her location and didn't advise J.R. of the birth until thirty-one days later, after the child was already in the hands of third-parties. On the other hand, Lehr knew his child's whereabouts from the moment of her birth;

(5) J.R. did not know what state his child was in until after it was too late to file. On the other hand, Lehr knew his child's whereabouts from the moment of her birth;

(7) J.R. implored Katie's family and friends to tell him where Katie was. Lehr already knew where his child was;

(8) J.R. implored Katie via *e-mail* to disclose her location to him. Lehr already knew where his child was;

(9) J.R. specifically and categorically objected to the adoption of his daughter, *prior* to her birth. Katie assured J.R. that she would not place his child for adoption. On the other hand, there is no evidence that Lehr ever objected to adoption prior to it actually occurring two years after the child's birth.

The *Lehr* Court's conclusion that "[Lehr's] right to receive notice *was completely within* [Lehr's] control" was based upon the fact that Lehr knew where his child was the entire time and did nothing for over two years. *Lehr*, 463 U.S. at 264, 103 S.Ct. 2987. As the enumerated factors stated above demonstrate, J.R. did not have control over his right to receive notice because Katie deprived him of that control. J.R.'s *right to receive notice* was not within his control. While the *Lehr* Court found that there was "no suggestion in the record that the

appellee engaged in fraudulent practices that led [Lehr] not to protect his rights" (*Id.* n. 23 at 265, 103 S.CT. 2989) the same cannot be said of Katie's actions. It is undisputed that she left the apartment she shared in Iowa with J.R. in her third trimester; that she didn't give J.R. notice she was leaving or where she was going; that she went to Minnesota, a State which she had told J.R. she would never go to; that with the advice of the adoption agency which placed the child, she consciously and intentionally withheld J.R.'s name from the birth certificate; that with the advice of the adoption agency she consciously and intentionally concealed her location until thirty-one days after the birth of their child; that she conspired with family and friends to keep her location a secret; and, that she placed their child for adoption two days after her birth, despite having assured J.R. that she wouldn't do so.

A putative father is entitled to due process when he "demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child.' " *Lehr,* 463 U.S. 248, 161, 103 S.CT. 2985 (1983) (quoting *Caban v. Mohammed,* 441 U.S. 380, 392, 99 S.CT. 1760 (1979). As argued by Justice Page's dissent in the present case,

> "Heidbreder demonstrated a full commitment to the responsibilities of parenthood. * * * [and] did nothing to avoid the responsibilities of parenthood; rather, each action he took had the effect of embracing those responsibilities. * * * The only reasonable conclusion based upon the record before us is that Heidbreder took steps that evince a clear effort on his part to come forward to participate in the rearing of his child." *Heidbreder v. Carton,* 645 N.W2d. 355, 380, 382 (Minn. 2002).

J.R. clearly demonstrated a full commitment to the responsibilities of parenthood. Early on, he expressed his deep conviction that his child not be aborted or placed for adoption. He participated in pre-natal care. He provided a home for Katie. He shared expenses with Katie. He offered financial assistance to Katie and his family provided maternity clothing. After Katie vanished without a trace, he actively attempted to locate her, and contacted an attorney to protect his rights. When he finally learned her location (one day late) he immediately attempted to preserve his rights by filing with the Father's Registry in Minnesota.

The Minnesota Father's Adoption Registry's stated purpose is to locate fathers who are interested in minor children, who are subject to adoption proceedings, where they otherwise may not be entitled to notice. It is clear that the statute was enacted to provide notice to an interested father, not to defeat his rights with an arbitrary thirty day line. The Minnesota Supreme Court rejected J.R.'s argument that fraudulent concealment by a mother with the express purpose of defeating a father's ability to register within thirty days deprives him of his rights, holding that an unwed mother owes absolutely no duty of disclosure (and therefore cannot be guilty of fraud), and that no fiduciary relationship exists which would make it *not possible* for him to timely register. *Heidbreder,* 645 N.W.2d 355, 366 (Minn. 2002).

The Minnesota Supreme Court's interpretation of Minnesota Father's Registry has foreclosed a willing father from asserting his fundamental right to parent his child. That interpretation is clearly a violation of J.R.'s due process protections.

B. The Decision is Contrary to Holdings of this Court Pertaining to the Equal Protection Clause of the 14th Amendment to the United States Constitution.

The *Lehr* decision (quoting *Caban v. Mohammed*, 441 U.S. 380 (1979)) also formed the basis for the Minnesota Supreme Court's dismissal of J.R.'s equal protection claim. Under the United States Constitution, a state cannot subject men and women to disparate treatment when there is no substantial relation between the disparity and an important state purpose. *Lehr*, 463 U.S. at 265, 103 S.CT. 2988, *citing Craig v. Boren*, 429 U.S. 190, 197-199 (1976). Like the New York statute in *Lehr*, Minnesota law always puts the mother of a child born out-of-wedlock within the favored class which must consent to an adoption of a child by third-parties, while placing restrictions on the ability of a putative father to assert his rights.

The Court in *Lehr* determined that since Lehr never established a *substantial relationship* with his child, the New York law did not operate to deny equal protection. As noted above, the facts in *Lehr* bear little resemblance to the facts of this case, and *Lehr* should not have been used by the Minnesota Supreme Court as its basis to deny J.R.'s equal protection claim. Lehr did not dispute the fact that he never 'shouldered any significant responsibility with respect to the daily supervision, education, protection, or care' of his child. On the other hand, J.R. never had an *opportunity* to engage in the daily supervision, education, protection or care of his child, because Katie intentionally concealed her location from him, and placed his daughter for adoption two days after her birth. One father neglected the *opportunity* presented to him, while the other never had it.

The *Lehr* Court cited the holding in *Caban* that nothing in the Equal Protection Clause would preclude a State from withholding the right to veto an adoption from a father (such as

Lehr) who had not "come forward to participate in the rearing of his child." *Caban,* 441 U.S. at 392. As argued above, the record does not support the conclusion of the Minnesota courts that J.R. did not *come forward.* J.R. did everything in his power to be a father to his daughter. Katie did everything in her power to prevent it. The Minnesota Supreme Court's interpretation of its statute has placed impossible barriers between J.R. and his ability to assert his rights. As such, he has not been afforded equal protection under the law.

The Minnesota legislature created an exception in the statute which allows a putative father to be provided notice, when through no reasonable fault of his own, he is unable to assert his rights by timely registering. The Minnesota Supreme Court has rendered the exception meaningless, and defeated the express intention of the statute, and in the process it deprived J.R. of his constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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STATE OF MINNESOTA
IN SUPREME COURT
C0-01-739

Court of Appeals

Anderson, Russell A., J.
Dissenting, Page, Anderson, Paul H., Gilbert, JJ.
Dissenting, Anderson, Paul H., J.

Dale "J.R." Heidbreder, petitioner,
Appellant,

vs.

Filed: June 13, 2002
Office of Appellate Courts

Kathleen Jean Carton, a/k/a Katie Carton, a/k/a Kate Carton,
Respondent,

M.J.P., et al.,
Respondents.

SYLLABUS

1. Birth mother's concealment of her location until 31 days after birth does not excuse a putative father's failure to register with the Minnesota Fathers' Adoption Registry before child is more than 30 days old as required by Minn. Stat. § 259.52 (2000).

2. Birth mother's failure to disclose her location to putative father does not constitute fraudulent concealment because birth mother does not owe a fiduciary duty to provide such information to putative father and thus putative father's claim that birth mother's fraudulent concealment of her location excuses his failure to timely register with the Minnesota Fathers' Adoption Registry fails as a matter of law.

3. Putative father cannot maintain paternity action involving child who is the subject of a pending adoption proceeding on theory he substantially complied with the requirement in Minn. Stat. § 259.52 that he register with the

Minnesota Fathers' Adoption Registry no liter than 30 days after birth of child.

4. The requirement in Minn. Stat. § 259.52 that putative father not otherwise entitled to notice of an adoption petition under Minn. Stat. § 259.49 (2000) must register with the Minnesota Fathers' Adoption Registry no later than 30 days after birth of child to assert a claim to a child who is the subject of an adoption petition .is not a statute of limitations that can be tolled by fraudulent concealment.

5. Putative father is not entitled to equitable relief on theory of promissory estoppel because any reliance on birth mother's statement early in pregnancy that she would not put child up for adoption was not reasonable in light of fact that birth mother fled from putative father and refused to disclose her location in final months of pregnancy and alleged "unclean hands" by birth mother did not bar prospective adoptive parents from opposing putative father's request for equitable relief.

6. Minnesota Statutes §§ 259.49 and 259.52 do not violate due process or equal protection as applied to putative father.

Affirmed.

Heard, considered, and decided, by the court *en banc*.

OPINION

ANDERSON, Russell A., Justice.

Appellant Dale "J.R." Heidbreder, an Iowa resident, registered with the Minnesota Fathers' Adoption Registry 31 days after his former girlfriend Katie Carton gave birth to a girl, K.M.C. After registering, Heidbreder commenced a paternity action in Steams County District Court in an attempt to block the pending adoption of K.M.C. in Minnesota. The prospective adoptive parents, respondents M.J.P. and M.B.P., intervened and moved to dismiss the paternity action under Minn. R. Civ. P. 12.03 on the grounds that Heidbreder's suit was barred under Minn. Stat. § 549.52, subd. 8 (2000), because Heidbreder was not entitled to notice of the adoption petition under Minn. Stat. § 259.49 (2000) and he failed to register with the Fathers' Adoption Registry within 30 days of K.M.C.'s birth. The district court treated the motion as a motion for summary judgment under Minn. R. Civ. P. 56. The district court granted respondents summary judgment and the court of appeals affirmed. We also affirm.

In November 1999, Carton, Heidbreder's girlfriend at the time, informed him that she was pregnant and due in August 2000. At the time, both lived in Fort Madison, Iowa. Carton was 18 years old and had graduated from high school in the spring of 1999. Heidbreder was a year older. According to Heidbreder, he and Carton had one discussion about adoption early in Carton's pregnancy. Carton expressed some interest in exploring adoption but Heidbreder told her he was "absolutely against" adoption and that he believed adoption was "not right." Heidbreder testified in his deposition that Carton told him she would "never ever" put his child up for adoption. While respondents dispute whether Carton made

an affirmative promise to Heidbreder not to put the child up for adoption, we view the facts in the light most favorable to Heidbreder as the nonmoving party at the summary judgment stage and assume,, for purposes of our decision, that Carton did in fact make such a promise to Heidbreder during their discussion of adoption.

In the spring of 2000, Carton moved out of her mother's house and went to Carthage, Illinois, for approximately 2 weeks. She then moved back to her mother's house. In June 2000, Carton and Heidbreder rented an apartment together in Fort Madison. Carton paid the security deposit and the rent for the month of June. Heidbreder occasionally paid for meals for Carton, but he never provided financial support to Carton for pregnancy-related expenses.

While Carton and Heidbreder were living together, Carton learned that her mother was moving to Minnesota. Carton's relationship with her mother was strained because of the pregnancy and because Carton's mother believed Heidbreder did not treat Carton well. Carton told Heidbreder she would not move to Minnesota with her mother. However, Heidbreder knew Carton had other relatives living in Minnesota.

Carton and Heidbreder argued during the time they lived together. In mid-June, Carton decided to leave Heidbreder. Carton testified in her deposition that she left Heidbreder because they were not getting along. Heidbreder testified that he did not know why Carton left but that at the time she left, Carton was "scared and confused."

Carton moved to St. Cloud, Minnesota, and lived with her grandparents for a few days. She then moved to New Beginnings, a home for pregnant teenage girls in St. Cloud.

Carton's mother moved to Minnesota in late June or early July.

While Carton maintained contact with Heidbreder through e-mail, she did not tell him where she was and she instructed her family and friends not to give Heidbreder any information about her location. Although Heidbreder asked for information, Carton's family and friends refused to tell him where Carton was. Heidbreder testified in his deposition that he believed Carton had returned to Illinois and he never considered the possibility that Carton was in Minnesota because of Carton's poor relationship with her mother.

According to Heidbreder, after Carton left he met with an attorney in Iowa to discuss visitation and child support. Heidbreder testified he did not discuss his rights in the event Carton put the child up for adoption because he did not believe Carton would do that. However, he also testified that the attorney told him that his child could not be adopted in Iowa without his consent. The attorney and Heidbreder considered hiring a private detective to find Carton, but never did so and other than talking to Carton's family and friends, Heidbreder did not take any steps to locate Carton. Nor did Heidbreder take any steps to commence a paternity action, to register with the Iowa Declaration of Paternity Registry under Iowa Code § 144.12A (2001), or to learn whether the laws of Illinois where Heidbreder believed Carton was required him to do anything to preserve his parental rights.[1] Heidbreder

[1] Minnesota law regarding when putative fathers are entitled to notice of a pending adoption and when they are required to register with the state's adoption registry is almost identical to the law of Illinois. *See* 750 Ill. Comp. Stat. Ann. 5017 (notice), 5018 (consent), 50112.1 (Illinois Putative Father Registry) (West 1999). As in Minnesota, a putative father not entitled to notice of an adoption petition has no right to make a claim to a child who is the subject of a petition for adoption in Illinois unless he registered with the Illinois Putative Father Registry before the child is more than 30 days old. *See id.*

explained in his deposition that he did not take any action after talking to the attorney because he and the attorney "figured [Carton] would * * * send [Heidbreder] papers."

While living at New Beginnings, Carton decided to give her child up for adoption. Through the Children's Home Society (CHS), Carton selected the couple she wanted to adopt K.M.C., respondents M.J.P. and M.B.P. During a meeting with a representative from CHS, Carton expressed concern that Heidbreder would stop the adoption. The representative explained to Carton that under Minnesota law, she was not required to name Heidbreder on the birth certificate and that if he was not named on the birth certificate, Heidbreder could not prevent the adoption unless he registered with the Minnesota Fathers' Adoption Registry no later than 30 days after the birth of the child.

Carton gave birth to a girl, K.M.C., on August 12, 2000. Carton did not identify a father on K.M.C.'s birth certificate and the space for identifying K.M.C.'s father was left blank. K.M.C. left the hospital with respondents on August 14, 2000, and respondents filed a petition to adopt K.M.C. in Washington County District Court.

On September 12, *2000, 31* days after K.M.C.'s birth, Heidbreder learned from a third party that Carton was in Minnesota, had given birth to a girl and had put her up for adoption. Heidbreder contacted Carton by e-mail. That night, Carton told Heidbreder over the telephone that she had given birth and had put the child up for adoption. She also told him it was too late for him to stop the adoption. The same day, Heidbreder found a website with information on the Minnesota Fathers' Adoption Registry and completed and mailed the necessary forms. The forms were postmarked September 12, 2000, 31 days after K.M.C.'s birth.

Heidbreder then commenced a paternity action in Steams County District Court seeking a paternity adjudication and custody of K.M.C. Carton counterclaimed for custody in the event Heidbreder's attempt to block the adoption of K.M.C. was successful. Pursuant to a stipulation between Heidbreder, Carton, and respondents, the district court allowed respondents to intervene. Action on respondents' adoption petition was stayed pending resolution of Heidbreder's paternity action. K.M.C. has remained in respondents' care throughout these proceedings.

Respondents moved to dismiss Heidbreder's paternity action on the grounds that Minn. Stat. § 259.52, subd. 8, barred Heidbreder from asserting parental rights to K.M.C. because he failed to register with the Minnesota Fathers' Adoption Registry before K.M.C. was more than 30 days old and he was not otherwise entitled to notice of an adoption petition under Minn. Stat. § 259.49, subd. 1(b) (2000). Heidbreder argued that his failure to timely file should be excused because Carton engaged in fraud by failing to disclose her location. He also challenged the constitutionality of Minn. Stat. §§ 259.49 and 259.52.

The district court treated respondents' motion to dismiss as a motion for summary judgment under Minn. R. Civ. P. 56. See Minn. R. Civ. P. 12.03 (allowing district court to treat motion to dismiss as motion for summary judgment if matters outside the pleadings are presented). The district court granted respondents summary judgment.

The district court held that Heidbreder could not proceed with his paternity action because he was not entitled to notice of an adoption proceeding under any of the criteria listed in Minn. Stat. § 259.49, subd. 1(b), and he failed to timely register with the Minnesota Fathers' Adoption Registry

under Minn. Stat. § 259.52. It concluded that Heidbreder's failure to timely register was not excused under Minn. Stat. § 259.52, subd. 8, because Heidbreder had not demonstrated by clear and convincing evidence that it was "not possible" for him to register before K.M.C. was more than 30 days old or that his failure to timely register was "through no fault of his own." The court concluded that it was possible for Heidbreder to timely register in Minnesota because he knew Carton was due in August 2000, knew she was hiding from him, and knew that there were a limited number of places where she could be: in Iowa with her father, in Illinois where she lived in the spring of 2000, or in Minnesota where her mother and other family lived. The court concluded that because Heidbreder did not take steps to protect his rights in any of the states where Carton could have been, there was not clear and convincing evidence that it was "not possible" for Heidbreder to timely register or that his failure to register was "through no fault of his own."

The court also found that Carton had not engaged in any fraud that deprived Heidbreder of the opportunity to timely register in Minnesota and that Carton had no duty to disclose her location to him. Finally, the court held that Minn. Stat. §§ 259.49 and 259.52 did not violate due process or equal protection as applied to Heidbreder under the United States Supreme Court's decision in *Lehr v. Robertson*, 463 U.S. 248 (1983).

Heidbreder appealed and the court of appeals affirmed. We granted review, to address Heidbreder's claims that (1) his failure to comply with the requirements of Minn. Stat. §§ 259.49 and 259.52 is excused due to fraud by Carton; (2) he should be permitted to pursue his paternity action because he substantially complied with Minn. Stat. § 259.52; *(3)* the deadline for registration with the Minnesota Fathers' Adoption Registry is a statute of limitations that is tolled by

Carton's fraudulent concealment of her location; (4) equitable estoppel bars respondents and Carton from challenging the timeliness of his registration; and (5) Minn. Stat. §§ 259.49 and 259.52 as applied to Heidbreder violate due process and equal protection.

I.

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment, as a matter of law. *Funchess v. Cecil Newman* Corp., 632 N.W.2d 666, 672 (Minn. 2001). On appeal from summary judgment, the court determines whether there are any material issues of fact in dispute and whether the lower courts erred in their application of the law. Id.

II.

Historically, most states, including Minnesota, did not recognize a putative father's[2] parental rights to a child and did not require that the putative father be given notice of the filing of a petition for adoption or that he consent to an adoption. *See* Minn. Stat. § 259.24, subd. 1(a) (1971); Comment, *The Emerging Constitutional Protection of the Putative Father's Parental Rights,* 70 Mich. L. Rev. 15 81,15 81-84 (1972) (reviewing state laws concerning treatment of putative father's parental rights).

In 1972, the United States Supreme Court recognized that a putative father with an established relationship with his

[2] A "putative father" is a man who may be the child's father but who was not married to the birth mother on or before the date of birth and has not established paternity in a court proceeding. Minn. Stat. § 259.21, subd.12 (2000).

children has a liberty interest in the "companionship, care, custody, and management of his * * * children" and that this interest warrants protection absent a "powerful countervailing interest." *Stanley v. Illinois,* 405 U.S. 645, 651 (1972). The court invalidated an Illinois statute that had the effect of presuming all putative fathers unfit to parent and rejected Illinois' assertion that because "most unmarried fathers are unsuitable and neglectful parents," it could deem all putative fathers unfit. *Id.* at 654. The court held that Illinois' interest in convenience did not justify denying a putative father a hearing on his fitness. *Id.* at 656-57.

Following *Stanley,* the Minnesota Legislature amended the adoption laws to recognize the rights of a putative father. Act of Feb. 21, 1974, ch. 66, §§ 1-10, 1974 Minn. Laws 89, 89-94; *see also In re Welfare of Larson,* 312 Minn. 210, 215 n.3, 251 N.W.2d 325, 329 n.3 (1977) (noting that legislature amended adoption laws to protect putative father's rights in response to *Stanley*). The legislature provided that the putative father was entitled to notice of an adoption proceeding if he (1) was named as a parent on the birth certificate, (2) substantially supported the child, (3) was married to the birth mother within 325 days before the child's birth or within 10 days after birth, (4) was openly living with the child or the person designated as the birth mother on the birth certificate, (5) had been adjudicated the child's parent, or (6) had filed an affidavit stating his intention to retain parental rights within 90 days of the child's birth or within 60 days of placement with the prospective adoptive parents, whichever was sooner, with the Department of Health's Division of Vital Statistics (the "90/60-day rule"). Minn. Stat. 1, 259.261 subd. 1 (1974).[3] § § 259.26, subd. The legislature also provided that the putative father's consent to the adoption was required

[3] These two statutes were later recodified at Minn. Stat. §§ 295.49 and 259.51 (1994). Act of May 10, 1994, ch. 631, § 31, 1994 Minn. Laws 1873, 1892.

if the putative father was entitled to notice. Minn. Stat. § 259.24, subd. 1 (1974).

While the 1974 amendments protected a putative father's rights, they also had the adverse effect of jeopardizing the state's interest in permanence and stability in adoptions. For example, the court of appeals held that a putative father's substantial compliance with the filing requirements entitled a putative father to notice of an adoption even though his affidavit was untimely filed with the Division of Vital Statistics. In re *Welfare of A.M.P.*, 507 N.W.2d 616, 621 (Minn. App. 1993). While A.M.P. was the only case in which the court of appeals found that a putative father who failed to timely file an affidavit had substantially complied with the requirements for notice, adoptive parents could never be certain that a putative father would not appear after the time for filing an affidavit expired and successfully challenge the validity of the adoption on the grounds he substantially complied with the 90/60-day rule.

In addition, the fact that a putative father failed to file an affidavit did not bar a putative father from seeking to establish an interest in the child by commencing a paternity action before the adoption was final. In *In re Paternity of J.A. V.*, 547 N.W.2d 374, 376-79 (Minn. 1996), we held that because the legislature did not specifically provide that the failure to timely file an affidavit barred a putative father from commencing an action to establish paternity, a putative father who failed to timely file an affidavit could pursue his parental rights through a paternity action. As a result, a putative father could thwart a pending adoption after the deadline for filing an affidavit of paternity expired by commencing a paternity action. We recognized in J.A. V. that our decision could lead to "inordinate delays and expense" in adoption proceedings, but concluded it was for the legislature, not the court, to address this issue. *Id.* at 379.

Following our decision in J.A. V., the legislature amended the adoption laws to limit a putative father's rights to a child that is the subject of a pending adoption petition. Act of May 30, 1997, ch. 218, §§ 7-9,1997 Minn. Laws 2200, 2202-10.

The legislature continued to require that the putative father's consent to the adoption be obtained if the putative father is entitled to notice of the adoption. Minn. Stat. § 259.24, subd. 1 (2000). It also continued to require that notice of the adoption be given to any putative father who is named on the birth certificate, has substantially supported the child, has married the birth mother, is openly living with the child or the person designated as the natural mother on the child's birth certificate, or has been adjudicated a parent of the child. Minn. Stat. § 259.49, subd. 1(b) (2000). However, the legislature limited a putative father's right to thwart a pending adoption by commencing a paternity action. The legislature provided that a putative father who commences a paternity action is entitled to notice, and therefore may block the adoption by withholding consent, if he commences his paternity action "within 30 days after the child's birth and the action is still pending" at the time the adoption petition is filed. Minn. Stat. § 259.49, subd. 1(b)(6). The statute does not require that the putative father commence his paternity action in Minnesota. The legislature also eliminated the 90/60-day rule and replaced it with a provision that entitles a putative father to notice if he registers with the newly created Minnesota Fathers' Adoption Registry under Minn. Stat. § 259.52. Minn. Stat. § 259.49, subd.1(b)(8).

Minnesota Statutes § 259.52 provides that any putative father may register with the Minnesota Fathers' Adoption Registry but requires that the putative father register no later than 30 days after the birth of the child in order to retain any interest in a child who is the subject of a pending

adoption petition. Minn. Stat. § 259.52, subds. 6, 7 (2000).[4] If a putative father is not entitled to notice of a petition for adoption under Minn. Stat. § 259.49, subd. 1, and does not register with the Minnesota Fathers' Adoption Registry before the child is more than 30 days old, the putative father:

> (1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;
>
> (2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and
>
> (3) is considered to have abandoned the child.
>
> Minn. Stat. § 259.52, subd. 8.

The legislature limited the circumstances under which a court can excuse a putative father's failure to timely register. A putative father's failure to timely register is excused if he proves by clear and convincing evidence that:

> (i) it was not possible for him to register within the period of time specified in subdivision 7;
>
> (ii) his failure to register was through no fault of his own; and
>
> (iii) he registered within 10 days after it became possible for him to file.

Id.

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[4] While this change gives a putative father less time after the birth of the child to protect his parental rights than the 90/60-day rule, a putative father may register upon knowledge of the possibility of conception, i.e. upon the occurrence of sexual intercourse. Thus, the putative father has up to 10 months (9 months of pregnancy plus 30 days) to register.

The legislature further limited a putative father's right to be excused from the registration requirement by providing that "lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." *Id.*

III.

The issue in this case is whether Heidbreder's paternity action must be dismissed due to his failure to register with the Minnesota Fathers' Adoption Registry before K.M.C. was more than 30 days old. Heidbreder is barred under Minn. Stat. § 259.52; subd. 8 from maintaining his paternity action unless (1) he was entitled to notice of the adoption under Minn. Stat. § 259.49, subd. 1, (2) he timely registered with the Minnesota Fathers' Adoption Registry, or (3) his failure to timely register is excused under Minn. Stat. § 259.52, subd. 8.

Heidbreder admits he does not meet any of the criteria for notice of the adoption under Minn. Stat. § 259.49, subd. 1 (b).[5] He argues, however, that he should be "deemed" entitled to notice because he would have been named on the birth certificate but for "fraudulent collusion" by Carton and CHS and because he would have timely commenced a paternity action had Carton revealed her location. This argument is without merit. There is no basis in the language of Minn. Stat.

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[5] The court of appeals held that Heidbreder was not entitled to notice under Minn. Stat. § 259.49, subd. 1 (b)(4), which requires notice to a person who "is openly living with the child or the person designated on the birth certificate as the natural mother of the child or both," because this provision requires notice only to a putative father who lived or is living with the child, birth mother, or both after the birth of the child. *Heidbreder v. Carton, 636* N.W.2d 833, 837 (Minn. App. 2001). On appeal to this court, Heidbreder has abandoned his argument that he was entitled to notice because he openly lived with Carton for a few weeks during Carton's pregnancy.

§ 259.49, subd. 1(b), for expanding the categories of putative fathers entitled to notice beyond those specifically listed.[6]

Heidbreder concedes that his registration, filed one day late, was untimely. He argues that his failure to timely register should be excused because it was "not possible" for him to timely register and that his failure to timely register was "through no fault of his own" under Minn. Stat. § 259.52, subd. 8(i)-(iii). He asserts that it was "not possible" for him to register in Minnesota because Carton concealed her location and he did not know she was in Minnesota.

The legislature specifically provided that lack of knowledge of pregnancy or birth would not excuse a putative father's failure to timely register. Minn. Stat. § 259.52, subd. 8. It is apparent from this statutory language that the legislature intended not to excuse an untimely registration based on concealment of the fact of pregnancy or birth by the birth mother even if the concealment made it "not possible" for the putative father to timely register and his failure to timely register was "through no fault of his own." It follows that concealment by the birth mother of facts related to the pregnancy or birth, such as her location during pregnancy or at the time of birth, would also not excuse a putative father's

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[6] We also note that there is no evidence indicating that CHS engaged in any fraudulent conduct. The record indicates that CHS did nothing more than tell Carton she was not legally required to identify a father on the birth certificate but that if she named a father he would be entitled to notice of the adoption. CHS merely informed Carton of the law in Minnesota and allowed her to make her own decision about whether to name Heidbreder on the birth certificate.

In addition, Carton's failure to disclose her location did not prevent Heidbreder from timely commencing a paternity action because Heidbreder knew at the time Carton left that she was pregnant, and he does not assert that he could not have filed a paternity action in Iowa or in Illinois-where he believed Carton was-to protect his interests in K.M.C. without knowing Carton's location.

failure to timely register even if he otherwise met the requirements of Minn. Stat. § 259.52, subd. 8(i)-(iii). Therefore, the fact that Carton concealed her location from Heidbreder does not excuse his failure to timely register with the Minnesota Fathers' Adoption Registry.

Heidbreder characterizes Carton's concealment as "fraud" and asserts that this excuses his failure to timely register because Carton's "fraud" made it "not possible" for him to timely register and made his failure to register "no fault of his own" under Minn. Stat. § 259.52, subd. 8.

We need not resolve the question of whether fraud by the birth mother excuses a putative father's failure to timely register under Minn. Stat. § 259.52 because Heidbreder cannot, as a matter of law, establish that Carton engaged in fraud.

> To establish fraud, a plaintiff must demonstrate:
>
> [T]hat [the] defendant (1) made a representation (2) that was false (3) having to do with a past or present fact (4) that is material (5) and susceptible of knowledge (6) that the representor knows to be false or is asserted without knowing whether the fact is true or false (7) with the intent to induce the other person to act (8) and the person in fact is induced to act (9) in reliance on the representation [and] (10) that the plaintiff suffered damages (11) attributable to the misrepresentation.

MH. v. Caritas Family Servs., 488 N.W.2d 282, 289 (Minn. 1992): A misrepresentation may be made by an affirmative statement that is itself false or by concealing or not disclosing certain facts that render facts disclosed misleading. Id.

Carton's statements that she would "never ever" choose adoption and would not move to Minnesota with her

mother fail to satisfy at least three elements of fraud. First, the statements concern future facts adoption and moving to Minnesota not past or present facts. Second, there is no evidence that at the time Carton made these statements she knew they were false. Heidbreder has presented no evidence that Carton intended to put the child up for adoption or that Carton intended to move to Minnesota when she told him she would not do either of these things. Carton testified that she moved to Minnesota on the "spur of the moment" and that she decided to put the child up for adoption after moving to Minnesota. The record does not support the conclusion that Carton knew her statements were untrue at the time she made them. Finally, there is no evidence that Carton made these statements intending to prevent Heidbreder from exercising his rights as the putative father or to induce him not to protect himself in the event she placed the child up for adoption. Thus, Heidbreder's claim that Carton committed fraud fails as a matter of law.

Heidbreder's claim that Carton engaged in fraudulent nondisclosure also fails as a matter of law. Nondisclosure does not give rise to a fraud claim unless there is "a legal or equitable obligation" to communicate facts to a particular person and that person is entitled to the information. *L & H Airco, Inc. v. Rapistan Corp.,* 446 N.W.2d 372, 380 Minn. 1989. A duty to disclose facts may exist when a fiduciary relationship exists between the parties or when disclosure would be necessary to clarify information already disclosed. *Id.*

Heidbreder does not assert that Carton had a duty to clarify her prior statements that she would not put the child up for adoption and would not move to Minnesota. Rather, he asks the court to hold that Carton, as the mother of his unborn child, owed him a fiduciary duty to disclose her location because her nondisclosure prevented him from protecting his

interest in K.M.C. as a putative father. At oral argument, Heidbreder's attorney clarified when the fiduciary duty on the birth mother to disclose her location should attach. He stated that the fiduciary duty, should not attach based solely on the occurrence of sexual intercourse and a resulting pregnancy. Rather, he asked us to hold that a fiduciary duty attaches at the time of birth and that upon giving birth, the birth mother is required to disclose her location to a putative father whom she knows is attempting to locate her.

We decline to impose a fiduciary duty on an unmarried birth mother to disclose her location to the putative father even if she knows he wants to know her location or establish a relationship with his child. We are not aware of any court that has imposed such a fiduciary duty on an unmarried birth mother to the putative father. There are numerous situations in which an unmarried birth mother would be justified in keeping information from a putative father, including situations where the woman has fled an abusive relationship, where the pregnancy was the result of nonconsensual intercourse, or where the putative father poses a danger to the child.

Furthermore, there is no need to impose such a duty on the birth mother in the interest of protecting a putative father's interests because the legislature has provided a means for the putative father to assert his interest in his child independent of the birth mother through registration with the Minnesota Fathers' Adoption Registry. Because a putative father is able to protect his interest in his child without any assistance or information from the birth mother, the birth mother is not in a position superior to the putative father such that she should be required to provide him with information regarding her location.

Because we decline to impose a fiduciary duty on a birth mother to notify a putative father of her location at the time of birth, Carton had no duty to disclose her location to Heidbreder, and thus Heidbreder's claim of fraudulent nondisclosure fails as a matter of law.

In the absence of evidence to support a finding of fraud or fraudulent nondisclosure, there is no reason to address whether either would make it "not possible" for a putative father to register or make the putative father's failure to register "no fault of his own" under Minn. Stat. § 259.52, subd. 8(i)-(ii).

Because the legislature has provided that lack of knowledge of pregnancy or birth does not excuse a putative father's failure to timely register, it is clear that the legislature intended to foreclose the argument that the birth mother's concealment of any information relating to the pregnancy or birth, including her location during pregnancy or at the time of birth, excuses a putative father's failure to register, regardless of whether the concealment made it "not possible" for the putative father to timely register and his failure to timely register "no fault of his own."[7] Therefore, Heidbreder's failure to timely register cannot be excused under Minn. Stat. § 259.52, subd. 8, based on Carton's concealment of her location. Because Carton did not engage in fraud, there is no need to address whether fraud by the birth mother could excuse a putative father's failure to timely register with the Minnesota Fathers' Adoption Registry.

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[7] The dissent asserts that the "bald assertions" contained in this statement have no basis in law or fact. However, in interpreting a statute, we must presume that the legislature did not intend an.absurd result. Minn. Stat. § 645.17(1) (2000). It would be absurd to conclude that a putative father who knew of the pregnancy but did not know the birth mother's location is entitled to greater protection under the statute than a putative father who is ignorant of both the pregnancy and the birth mother's location.

IV.

Heidbreder argues that his registration with the Minnesota Fathers' Adoption Registry should be deemed timely because he substantially complied with the statute.

In the 1950s, we stated in two cases that deficiencies in an adoption proceeding would not bar approval of an adoption if the party petitioning for adoption substantially complied with the statutory requirements. *See In re Petition of Jordet,* 248 Minn. 433, 439, 80 N.W.2d 642, 646 (1957); *In re Adoption of Anderson,* 235 Minn. 192, 197, 50 N.W.2d 278, 283 (1951). Relying on these decisions, the court of appeals recognized a substantial compliance exception to the former 90/60-day rule. *See A.M.P.,* 507 N.W.2d at 621. We have never addressed whether a putative father is entitled to notice if he substantially complied with the statutory requirements for registration with the Minnesota Fathers' Adoption Registry.

We decline to carve out a substantial compliance exception to the statutory requirement that a putative father not otherwise entitled to notice of petition for adoption under Minn. Stat. § 259.49, subd. 1, must register with the Minnesota Fathers' Adoption Registry no later than 30 days after the birth of the child in order to assert an interest in a child who is the subject of a petition for adoption. The legislature created the Minnesota Fathers' Adoption Registry after the court of appeals' decision in A.M.P. but did not include a substantial compliance exception. The legislature's decision to excuse a putative father's failure to time/' register only if he can establish by "clear and convincing evidence" that it was "not possible" for him to have timely registered and that his failure to register was "through no fault of his own," indicates that the legislature did not want untimely

registration to be excused based on the putative father's substantial compliance with the registration deadline.

We agree with Heidbreder that the purpose of the Minnesota Fathers' Adoption Registry is to provide a mechanism for identifying putative fathers and giving them notice of adoption proceedings. *See* Minn. Stat. § 259.52, subd. 1. However, adoption registries are also intended to balance the putative father's interests with those of the child, the birth mother, and adoptive parents. *See In re Petition of K.J.R., 687* N.E.2d 113, 117 (Ill. App. Ct. *1997).* Adoption registries serve the interests of the child and adoptive parents by establishing a clear cut-off date after which there is little risk that a putative father who has failed to timely register and who is not otherwise entitled to notice can disrupt the adoptive placement.[8] While recognizing a substantial compliance exception would benefit putative fathers who fail to timely register, such an exception would also weaken the permanence and stability adoption registries give adopted children.

In enacting Minn. Stat. § 259.52, the legislature has decided that a putative father must act promptly to assert his interest in a child. We recognize that Heidbreder's registration was only one day late. However, under the statute, Heidbreder's registration cannot be treated any differently than a registration that is one week, one month, one year, or one decade late. The state cannot give a putative father an infinite amount of time to claim an interest in the child. At

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[8] In addition to serving the interests of a child who is adopted, the Minnesota Fathers' Adoption Registry also serves the interests of a child who is raised by her birth mother because it allows a public authority responsible for enforcing child support to have the registry searched to determine whether "a putative father is registered in relation to [the] child who is or may be the subject of a child support obligation." Minn. Stat. § 259.52, subd. 3 (2000).

some point, the putative father's interest in knowing and raising his child gives way to the child's interest in having a permanent and stable home. While the deadline here may seem unjustly short to the putative father who misses the deadline, the period is justified by the need for early permanent and stable placement. No matter how much time the legislature provides for registration, the possibility that a putative father will miss the deadline by one day can never be eliminated. We will not undermine the legislature's determination that a putative father not otherwise entitled to notice of an adoption proceeding under Minn. Stat. § 259.49, subd. 1, must register within 30 days of the child's birth to protect his interests by recognizing a substantial compliance exception for a putative father who misses the statutory deadline but claims his registration should nonetheless be recognized because he acted promptly upon learning of the need to register.

> To conclude that [the putative father] acted promptly once he became aware of the child is to fundamentally misconstrue whose timetable is relevant. Promptness is measured in terms of the baby's life not by the onset of the father's awareness. The demand for prompt action by the father at the child's birth is neither arbitrary nor punitive, but instead a logical and necessary outgrowth of the State's legitimate interest in the child's need for early permanence and stability.

Robert 0. v. Russell K., 604 N.E.2d 99,103-04 (N.Y. 1992).

Because creating a substantial compliance exception would defeat one of the purposes of the Minnesota Fathers' Adoption Registry-permanent and stable adoptive placements-we hold that substantial compliance with the registration requirements does not excuse a putative father's failure to timely register.

We also reject Heidbreder's claim that the registration deadline of 30 days after birth in Minn. Stat. § 259.52, subd. 7, is a statute of limitations that can be tolled by fraudulent concealment. Generally, a statute of limitations affects a party's remedy not his right. *See State ex rel. Moser v. Kaml,* 181 Minn. 523, 527, 223 N.W. 802, 804 (1930). Here Minn. Stat. § 259.52 does not provide any remedy to a putative father but rather terminates a putative father's substantive rights to a child who is the subject of an adoption petition if he fails to timely register. Minn. Stat. § 259.52, subd. 8. Therefore, the registration deadline is not a statute of limitations.

Even if we were to treat the registration deadline as a statute of limitations that could be tolled by fraudulent concealment, Heidbreder would not be entitled to relief because Carton had no duty to inform Heidbreder of her location or otherwise assist him in protecting his rights. *See Lehr,* 463 U.S. at 265 n.23 (noting that "[i]t is a generally accepted feature of our adversary system that a potential defendant who knows that the statute of limitations is about to run has no duty to give the plaintiff advice").

VI.

Heidbreder also argues that promissory estoppel bars respondents and Carton from seeking dismissal of his paternity action because Carton promised him she would "never ever" put his child up for adoption. He also contends that respondents and Carton are barred from opposing equitable relief because Carton has "unclean hands."

A party seeking to invoke the doctrine of equitable or promissory estoppel has the burden of proving (1) that promises or inducements were made; (2) that he reasonably

relied upon the promises; and (3) that he will be harmed if estoppel is not applied. *Hydra-Mac, Inca v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990). We assume, as we must in reviewing summary judgment, that Carton promised Heidbreder she would never put the child up for adoption. Nonetheless, Heidbreder's promissory estoppel claim fails because we conclude that, as a matter of law, it was unreasonable for Heidbreder to rely on Carton's promise after she left him. *See Nicollett Restoration, Inc. v. City of St. Paul,* 533 N.W.2d 845, 848 (Minn. 1995) (recognizing that summary judgment is appropriate on promissory estoppel claim if plaintiff s reliance on alleged promise was unreasonable as a matter of law).

Carton effectively ended her romantic relationship with Heidbreder when she Minnesota and refused to tell him where she was.[9] Once that relationship ended, Heidbreder could not reasonably expect that Carton, who as far as he knew would be raising the child alone, would not reconsider her promise not to put the child up for adoption. Heidbreder was aware that Carton had suggested the possibility of adoption and that her promise not to put the child up for adoption was made after he told her he was "absolutely against" adoption because it is "not right." Heidbreder also believed Carton was ~ "scared and confused" when she left him. Under these circumstances, Heidbreder could not reasonably believe that a "scared and confused" Carton would not reconsider adoption after she ended their relationship, moved away, and refused to reveal her location. Indeed, such actions by a birth mother, if anything, are consistent with a birth mother's decision to put her child up for adoption

[9] While Carton maintained contact with Heidbreder via e-mail, Heidbreder does not assert that he and Carton were still romantically involved or that Carton ever indicated she wanted to continue their relationship after she left.

without interference from the putative father and would put a putative father on notice of the need to protect his rights.

Heidbreder argues that respondents and Carton cannot oppose equitable relief because Carton acted with "unclean hands." The doctrine of "unclean hands" bars a party who acted inequitably from obtaining equitable relief. *See Gully v. Gully, 599* N.W.2d 814, 825 (Mina. 1999). It does not bar a party with "unclean hands" from opposing a request for equitable relief by the other side. Here, it is Heidbreder, not respondents, seeking equitable relief and it is irrelevant whether anyone other than Heidbreder acted with "unclean hands." Therefore, we do not need to address whether Carton, while not engaging in any fraud, acted with "unclean hands" such that respondents would not be entitled to equitable relief if the were seeking such relief.[10]

VII.

We now turn to Heidbreder's constitutional arguments that Minn. Stat. §§ 259.49 and 259.52 violate due process and equal protection as applied to him because they deprived him of his parental rights and gave Carton greater rights in the adoption proceeding than him.

The constitutionality of a statute is question of law that is reviewed de novo on appeal. *Associated Builders & Contractors v. Ventura, 610* N.W.2d 293, 298 (Minn. 2000). Statutes are presumed to be constitutional and the party challenging the constitutionality of a statute "must meet the

[10] It is not clear to us that even if respondents were seeking equitable relief and Carton had "unclean hands" that it is appropriate to deny prospective adoptive parents equitable relief based on the conduct, of the birth mother. The interests of the birth mother and adoptive parents are not always aligned as they are here and there may be situations in which it would be unjust to deny adoptive parents equitable relief based on the conduct of the birth mother. However, we do not need to address the issue here because respondents seek legal rather than equitable relief.

very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *Id.* at 299.

A. *Procedural Due Process*

A person may not allege a procedural due process violation unless the person has a protected property or liberty interest at stake. *State v. Mitchell,* 577 N.W.2d 481, 492 (Minn. *1998).* Heidbreder argues that he has a protected liberty interest in having a relationship with K.M.C. because he is her biological father.[11] However, the mere existence of a biological connection between a child and a putative father does not confer due process protection on the putative father's parental interests. *Lehr,* 463 U.S. at *26061* (citing *Caban v. Mohammed,* 441 *U.S. 380, 397 (1979)* (Stewart, J., dissenting)). A putative father's interest in knowing his child is entitled to due process protection only when the father "demonstrates a full commitment to the responsibilities of parenthood by `com[ing] forward to participate in the rearing of his child.'" *Lehr, 463* U.S. at *261* (quoting *Caban,* 441 U.S. at 392). While the Court has never addressed the degree of involvement a putative father must have to demonstrate "a full commitment" to the responsibilities of parenthood, it has recognized that a putative father could demonstrate the required commitment if he has a "significant custodial, personal, or financial relationship" with the child. *Lehr, 463* U.S. at *262.*

Here Heidbreder is not entitled to due process protection of his interest in K.M.C. because he does not have a custodial, personal or financial relationship with K.M.C. Heidbreder never had a custodial right to K.M.C. *See* Minn. Stat. § 257.541, subd. 1 (2000) (providing that birth mother

[11] Although the parties do not dispute that Heidbreder is K.M.C.'s biological father, he has never been adjudicated the biological father of K.M.C.

who is not married to child's father at time of conception or birth has sole custody of child until paternity is established in a judicial proceeding). In addition, there is no evidence in the record that would support a conclusion that Heidbreder had a personal relationship with K.M.C. The record is also void of any evidence that Heidbreder provided, or attempted to provide, financial support to Carton during her pregnancy or to K.M.C. following her birth. Therefore, due process does not require recognition of Heidbreder's interest in K.M.C. as a putative father.[12]

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[12] The dissent concludes that Heidbreder demonstrated a sufficient commitment to K.M.C. entitling him to due process protection because he "did nothing to avoid the responsibilities of parenthood." However, a putative father does not acquire a protected liberty interest in .his child by merely failing to do anything to avoid his parental responsibilities. A putative father must affirmatively demonstrate a commitment to such responsibilities.

> [A]n unwed father's right to a continued parental relationship [is defined] by his manifestation of parental responsibility. * * * [W]e take this to mean that the qualifying interest of an unwed father requires a willingness himself to assume full custody of the child not merely to block adoption by others.

In re Raquel Marie X., 559 N.E.2d 418, *428 (N.Y. 1990).*

The dissent interprets Heidbreder's actions in telling Carton he would support her but would not support adoption, in living with Carton for only a few weeks, maintaining contact with Carton through e-mail, consulting an attorney, and trying to locate her indicates an intent to rear the child. We disagree.

Heidbreder's actions do not unequivocally indicate an intent to assume full custody of K.M.C. Rather, his actions (and inaction in failing to take any steps to obtain visitation or to ensure that the child received financial support from him) are equally consistent with those of a putative father who does not want his child adopted because he believes adoption is "not right" but intends to avoid assuming the responsibility of providing for the child's emotional and financial needs by simply waiting for the birth mother to "send [him] papers." While Heidbreder may have sincerely wanted a relationship with K.M.C. before she was more than 30 days old, his actions do not demonstrate a commitment to the responsibilities associated with that relationship such that due process requires that he be given a voice in K.M.C.'s future.

Because Heidbreder did not have an established relationship with K.M.C., the only due process issue is whether the state "has adequately protected his opportunity to form such a relationship." *Lehr, 463* U.S. at *262-63.*

In *Lehr,* the Court rejected a due process challenge to a New York statutory scheme similar to our own that required notice of an adoption petition to a putative father only if the putative father fell into one of seven categories, which included putative fathers who had registered with New York's adoption registry. The Court concluded that the statutory scheme adequately protected a putative father's opportunity to establish a relationship with his child because the statutory procedure was unlikely to omit most responsible fathers and did not place "qualification for notice * * * beyond the control of an interested putative father." *Lehr, 463* U.S. at 264. The Court found no due process violation even though the scheme denied a putative father who had expressed, belatedly, an interest in his child because:

> [T]he right to receive notice was completely within appellant's control. By mailing a postcard to the putative father registry, he could have guaranteed that he would receive notice of any proceeding to adopt Jessica. The possibility that he may have failed to do so because of his ignorance of the law cannot be a sufficient reason for criticizing the law itself. The New York Legislature concluded that a more open-ended notice requirement would merely complicate the adoption process, threaten the privacy interests of unwed mothers, create the risk of unnecessary controversy, and impair the desired finality of adoption decrees.

Id. at 264 (footnote omitted).

The Court also rejected the putative father's claim that even if the statutory scheme adequately protected a putative father's opportunity to establish a relationship with his child in the "normal case," he was nonetheless entitled to "special notice" because the trial court and birth mother "knew that he had filed an affiliation proceeding in another court." *Id.* at 264-65. The Court stated:

> This argument amounts to nothing more than an indirect attack on the notice provisions of the New York statute. The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute. The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights. Since the New York statutes adequately protected appellant's inchoate interest in establishing a relationship with Jessica, we find no merit in the claim that his constitutional rights were offended because the Family Court strictly complied with the notice provisions of the statute.

Id. at 265 (footnote omitted).

Heidbreder argues that the requirement that he register with the Minnesota Fathers' Adoption Registry before K.M.C. was more than 30 days old to protect his interests as a putative father is inadequate because he did not know Carton was in Minnesota, he did not know Minnesota law required him to register, and he was not required to do anything under

Iowa law to receive notice of termination of his parental rights and pending adoption of his child in Iowa. However, the issue here is not whether one part of the statutory scheme the-Minnesota Fathers' Adoption Registry-adequately protected Heidbreder's interests, but whether the entire scheme adopted by the legislature adequately protected Heidbreder's opportunity to form a relationship with K.M.C. We conclude that the statutes, as applied to Heidbreder, adequately protected his opportunity to establish a relationship with K.M.C.

The statutory scheme here is almost identical to the statutory scheme upheld in *Lehr*. The only material factual distinction between the two cases is that here the putative father is not a resident of the state in which he was required to register. However, the fact that Heidbreder is not a Minnesota resident does not make the statutory scheme unconstitutional as applied to him because the scheme is not "likely to omit many responsible fathers" who live outside of Minnesota and "qualification for notice [is] not beyond the control of an interest putative father" living outside the state, *Lehr,* 463 U.S. at 264.[13]

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[13] The dissent concludes that *Lehr* is inapplicable here because unlike the putative father in *Lehr,* Heidbreder did not wait 2 years to establish a relationship with the child and Heidbreder "tried at every turn to grasp the opportunity to develop a relationship with his offspring and accept some measure of responsibility for his child's future." However, *Lehr* controls our decision because the issue here is not whether Heidbreder tried to grasp the opportunity to develop a relationship with K.M.C. at some point in her life, but rather whether the state provided Heidbreder a sufficient opportunity to develop a relationship with K.M.C. that would be entitled to due process protection. While the legislature could have included other categories of putative fathers among those entitled to notice of an adoption proceeding including `putative fathers who live with the birth mother at some point during the pregnancy or who express opposition to adoption there is no basis for concluding that due process *requires* notice to these categories of putative fathers: Our statutory scheme requires notice to the same categories of putative fathers who were entitled to

In addition to registering with the Minnesota Fathers' Adoption Registry, a nonresident putative father can ensure that his parental rights are not terminated under Minn. Stat. § 259.52, subd. 8, by commencing a paternity action. *See* Minn. Stat. § 259.49, subd. 1(b)(6) (2000). There is no requirement in Minn. Stat. §.259.49, subd.1(b)(6), that the paternity action be commenced in Minnesota. Therefore, a putative father may protect his interest in a child by commencing a paternity action in his own state before the child is more than 30 days old.

Furthermore, even though Heidbreder is an Iowa resident, Minnesota law did not foreclose his opportunity to establish the required relationship with K.M.C. Heidbreder knew or had sufficient reason to believe that Carton was not in Iowa. Therefore, it was not reasonable for him to assume he could rely exclusively on the provisions of Iowa law to protect his interests. Under the circumstances, Heidbreder could have done more than simply assume Carton "would * *

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notice under the statutory scheme upheld in *Lehr*. While the dissent would like the legislature to do more to protect a putative father's rights, the legislature has provided all the due process protection required under the Court's decision in *Lehr*.

Furthermore, we disagree with the dissent's conclusion that Heidbreder has "grasp[ed], the opportunity" to demonstrate a commitment to the responsibilities of parenthood. During Carton's pregnancy and up until 31 days after K.M.C.'s birth, the only things Heidbreder arguably did in an effort to establish a relationship with his offspring was asking Carton and her family and friends about her location and meeting with an attorney. Merely asking about Carton's location does not indicate an intent to assume the responsibilities of parenthood. Similarly, Heidbreder's discussions with an attorney do not indicate an intent to assume such responsibilities: After meeting with the attorney, Heidbreder decided, for whatever reason, not to avail himself of the legal opportunities available to him to establish a relationship with K.M.C. Rather, Heidbreder chose to do nothing and wait for Carton to send him papers. Based on these facts, we disagree with dissent's conclusion that Heidbreder "grasp[ed] the opportunity" to demonstrate a full commitment to K.M.C.

send [him] papers." Heidbreder had opportunities under Iowa law to establish a sufficient commitment. He could have registered with the Iowa Declaration of Paternity Registry or commenced 'a paternity action in Iowa.[14] In addition, while Heidbreder did not know with certainty where Carton was, he had sufficient information to put him on notice that it was possible she was in Illinois or Minnesota. [15] Both Illinois and Minnesota provided Heidbreder with the opportunity to establish a commitment. Heidbreder could

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[14] A putative father may commence a paternity action in Iowa according to the same procedure applicable to a paternity action brought by the birth mother. *See* Iowa Code *§* 600B.7 (2001). A birth mother may commence a paternity action during the pregnancy. Iowa Code § 600B.9 (2001).

[15] The dissent asserts that our conclusion that Heidbreder had sufficient information to be on notice that Carton could be in Minnesota or Illinois is "speculative, at best," and "simplistic" in light of the ease and frequency with which people now move from state to state. We disagree.

Our conclusion that Heidbreder was on notice that Carton could be in Minnesota or Illinois is based on the information Heidbreder knew or believed. Heidbreder knew Carton had relatives in Minnesota and that her mother was moving to Minnesota. While Heidbreder knew Carton's relationship with her mother was strained and Carton told Heidbreder she would not move to Minnesota with her mother, it is reasonable to recognize that there was at least the possibility that a pregnant "scared and confused" 18year-old woman might request assistance from her mother or out-of-state relatives for assistance if she did not want the birth father to know her location. In addition, Heidbreder knew that Carton had gone to Illinois earlier in the pregnancy and he testified that he believed Carton was in Illinois. In light of Heidbreder's testimony and other facts he knew about Carton's contacts with Illinois, imputing notice to him that Carton could be in Illinois cannot be labeled "speculative."

The fact that people move from state to state only buttresses our conclusion that the fact Carton had moved out of state does not excuse Heidbreder's failure to register. Because people move from state to state with ease and frequency, Heidbreder could not reasonably assume that Carton would stay in Iowa. This is especially true in light of the fact that Heidbreder knew Carton had relatives in Minnesota and contacts in Illinois, and knew that she did not want Heidbreder to know where she was.

have commenced a paternity action in either state or registered with the adoption registries provided by both states. Any of the above options would have put Heidbreder in a position to argue he established a sufficient commitment to warrant due process protection.'[16] Therefore, as applied to the circumstances of this case, Minn. Stat. §§ 259.49 and 259.52 adequately protected Heidbreder's opportunity to establish the required commitment necessary for due process protection to arise.

That the statutes could provide more time or greater opportunity for the putative father to establish the required relationship is a policy decision that is left to the legislature. The Court recognized in *Lehr* that the legislature may require strict adherence to statutory procedures as long as the statute satisfies due process constraints. 463 U.S. at *265.* The Minnesota Legislature has made policy choices similar to those made by the New York Legislature at issue in *Lehr.* Because the statutes provide adequate notice and opportunity to be heard to someone who has established a sufficient relationship to create a protected liberty interest and also adequately protected Heidbreder's opportunity to create such a relationship, the statutes satisfy due process requirements.

B. *Equal Protection.*

Heidbreder claims that Minn. Stat. §§ 259.49 and 259.52 violate equal protection as applied to him because Carton receives more favorable treatment under the statutes than he in the proceeding for the adoption of K.M.C. This

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[16] We note that registration with another state's registry does not entitle a putative father to notice under Minn. Stat. §§ 259.49 or 259.52. If registration with an adoption registry in any state is, by itself, sufficient to demonstrate a substantial commitment to the child, then arguably a putative father is entitled to due process protection regardless of whether state law recognizes such registration. We need not address the issue here because we are not presented with a situation in which a putative father registered with another state's registry.

argument is without merit. It is well established that the state can treat unmarried parents differently with respect to their rights in an adoption proceeding based on each parent's relationship to the child. *Lehr,* 463 U.S. at 267-68. Equal protection does not prohibit the state from treating a birth mother with an established custodial relationship with the child more favorably than a putative father who does not have an established relationship. Id. As the birth mother, Carton had an established custodial relationship with K.M.C. under Minnesota law. *See* Minn. Stat. § 257.541, subd. 1. In contrast, Heidbreder did not have an established relationship with K.M.C., nor did he avail himself of the opportunities provided to him to establish such a relationship. Under these circumstances, Carton and Heidbreder were not similarly situated with respect to their relationship to K.M.C., and equal protection does not require the legislature to give Heidbreder the same opportunity as Carton to voice an opinion about K.M.C.'s best interests or to block the adoption by withholding consent.

VIII.

The dissent asserts that in our "arrogance" we have foreclosed the possibility that the best interests of the child can be met by having a permanent and stable relationship with the child's biological father. The legislature has concluded, however, that a child's best interests will be served in an adoption proceeding if the rights of any putative father not entitled to notice of her adoption under Minn. Stat. § 259.49 are terminated unless the putative father registered with the Minnesota Fathers' Adoption Registry before the child is more than 30 days old or the putative father's failure to register is excused under Minn. Stat. § 259.52, subd. 8(i)-(iii). Our decision today is not made in arrogance, but rather in deference to the legislature's determination of when a child's interest in permanence and stability in an adoptive

placement takes priority over any interest a putative father has in establishing a relationship with the child. The legislature has carefully balanced the different interests of the child and putative father, and its decision, as applied to Heidbreder, does not violate the constitution. Under these circumstances, nothing would be more arrogant than for us to disregard the legislature's decision concerning the best interests of a child out of a desire to give a putative father time beyond that prescribed by the legislature to assert an interest in a child.

Affirmed.

DISSENT

PAGE, Justice (dissenting).

I respectfully dissent because the court's decision (1) improperly applies Minn. Stat. § 259.52, subd. 8 (2000), to the facts of this case and (2) as a result violates Heidbreder's right to due process.

Before and during the majority of Carton's pregnancy, Heidbreder and Carton lived in Iowa. At that time, Heidbreder was 19 and Carton was 18. At some point during the early stages of Carton's pregnancy, Heidbreder and Carton discussed adoption, and Heidbreder unequivocally stated that he was opposed to the idea. . Carton agreed that she would not place the child up for adoption. Eventually, Heidbreder and Carton tried living together, which they did for a short period. Ultimately, Heidbreder and Carton separated because, according to Carton, she and Heidbreder could not get along.[1]

Upon separating, Carton left Iowa and moved to Minnesota, living in various places. She did not tell Heidbreder where she moved. She moved to Minnesota, living first with her grandparents in St. Cloud and then at a home for unwed pregnant teenagers. Carton and Heidbreder maintained contact via e-mail but she continued to refuse to tell him where she was. Carton also directed her family and friends not to reveal her whereabouts to Heidbreder. Heidbreder attempted to find Carton by asking her relatives and friends where she was, but they refused to tell him

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[1] The court states, "Carton and Heidbreder argued during the time they lived together." while accurate, it seems that the court's motive in pointing this out is to suggest that, because they argued, Heidbreder engaged in conduct making him either unfit to parent or unwilling to parent his child. The record does not, however, support the conclusion that he is either unfit or unwilling to do so. Moreover, the fact that Heidbreder and Carton argued and could not get along does not support the conclusion that Heidbreder's failure to register within 30 days after birth was not excused.

anything. In addition, Heidbreder attempted to contact Carton's grandparents in Minnesota to ask them where Carton might be, but was unable to do so because he did not know the grandparent's last name and people who knew would not tell him.

The record indicates that, in an effort to protect his rights, Heidbreder consulted an attorney in Iowa to discuss "setting up child support payments and visitation rights." Heidbreder Dep. Tr. at 37. Heidbreder told the attorney that he did not believe that Carton would consider adoption for their child and, therefore, the two did not discuss Heidbreder's parental rights in that context. The attorney told Heidbreder that, in any event, his consent was necessary for adoption under Iowa law. Heidbreder and the attorney considered hiring a private investigator to locate Carton, but did not do so. Heidbreder and the attorney also considered instituting a paternity action, but Heidbreder testified that because they did not know where Carton was, the attorney was unsure of where to commence such an action. Heidbreder and the attorney decided to wait for Carton to contact them with information about her location.

Carton began adoption proceedings with the Children's Home Society (CHS) while at the home for pregnant teenagers. Carton told a CHS representative that she knew Heidbreder would not want her to go through with the adoption. A CHS representative told Carton that, if she omitted Heidbreder's name from the birth certificate Heidbreder would not be able to stop the adoption unless he registered with the Minnesota Fathers' Adoption Registry within 30 days of the child's birth.

Carton gave birth to K.M.C. on August 12, 2000. Carton omitted Heidbreder's name from the birth certificate, and K.M.C. was placed in an adoptive home two days later. Thirty-one days after K.M.C.'s birth, Heidbreder learned that K.M.C. had been born in Minnesota. That same day, Heidbreder found a website for the Minnesota Fathers' Adoption Registry and registered.

I.

To receive notice of an adoption proceeding, putative fathers whose names are not included on the child's birth certificate and who are not otherwise entitled to notice pursuant to Minn. Stat. § 259.49, subd. 1 (2000), must register with the Fathers' Adoption Registry within 30 days of the child's birth unless excused. Minn. Stat. § 259.52 (2000). Failure to register within that time period may be excused if the putative father proves by clear and convincing evidence that "(i) it was not possible for him to register within the period of time specified in subdivision 7; (ii) his failure to register was through no fault of his own; and (iii) he registered within ten days after it became possible for him to file." Minn. Stat. § 259.52, subd. 8. Lack of knowledge of pregnancy or birth is not an excuse under the statute. Id. The court concludes that Heidbreder did not show that it was not p ossible for him to register or that his failure to register was through no fault of his own. Based on the facts presented, however, Heidbreder's failure to file within 30 days of K.M.C.'s birth was excused under section 259.52, subdivision 8.

Was it possible for Heidbreder to register with the Minnesota Fathers' Adoption Register within the 30 days, such that his failure to register was his fault? The answer is unquestionably no. It is true in theory that Heidbreder could have attempted to protect his parental rights in each of the 50 states, but such a legal requirement would be inefficient and

unreasonable. As a practical matter, it was "not possible" for Heidbreder to register in any state, given that he did not know and had no way of knowing where Carton was living after she left Iowa. Because he did not know that she was in Minnesota, he had no reason to attempt to protect his parental rights in Minnesota as opposed to some other jurisdiction. As such, I would conclude that it was "not possible" for Heidbreder to register within the required 30-day time period and that his failure to register was "through no fault of his own." Finally, because Heidbreder registered within 10 days of when it became possible for him to do so, I would conclude that Heidbreder demonstrated by clear and convincing evidence that his failure to timely register was excused under section 259.52, subdivision 8.

Based on the statutory provision that "lack of knowledge of pregnancy or birth does not excuse a putative father's failure to timely register," the court asserts:

> [I]t is clear that the legislature intended to foreclose the argument that the birth mother's concealment of any information relating to the pregnancy or birth, including her location during pregnancy or at the time of birth, ~~ excuses a putative father's failure to register, regardless of whether ~ the concealment made it "not possible" for the putative father to timely register and his failure to timely register "no fault of his own."

Interestingly, the court provides no support for this statement. The bald assertions contained iri this statement have no basis in fact or in law. Moreover, there is no logical stopping point to the court's line of reasoning. Based on the court's interpretation of the "lack of knowledge" provision, it is not clear that there is any circumstance that would make it "not possible" to register and thereby qualify as an excuse

under subparts (i)-(iii) of section 259.52, subdivision 8. By stating that, "[i]n the absence of evidence to support a finding of fraud or fraudulent nondisclosure, there is no reason to address whether either would make it `not possible' for a putative father to register or make the putative father's failure to register `no fault of his own,"' the court suggests that either fraud or fraudulent nondisclosure would excuse a putative father's untimely registration. This suggestion rings hollow, however, given the court's subsequent conclusion that a claim for fraud or fraudulent nondisclosure cannot exist because a birth mother has no fiduciary duty to inform a father of the child's place of birth. In the process, the court has emasculated section 259.52, subdivision 8(i)-(iii), and violated Minn. Stat. § 645.16 (2000) ("Every law shall be construed, if possible, to give effect to all its provisions."). Although lack of knowledge of pregnancy or birth is not an acceptable reason for failure to register, the issue here is lack of knowledge of where to register.

The court states that it would be "absurd to conclude that a putative father who knew of the pregnancy but did not know the birth mother's location is entitled to greater protection under the statute than a putative father who was ignorant of both the pregnancy and the birth mother's location." This interpretation of section 259.52, subdivision 8 strips it of all meaning by leaving no group of fathers to whom the exception can apply. The only fathers entitled to protection under subdivision 8 are fathers who in fact knew of the pregnancy or birth, given that lack of knowledge of pregnancy or birth is not an excuse. The court's conclusion that fathers who know and fathers who do not know of the birth or pregnancy are excluded from protection under subdivision 8 is not only absurd, but legally impermissible. *See* Minn. Stat. §§ 645.16, 645.17(1), (2) (2000).

The court also states, "while Heidbreder did not know with certainty where Carton was, he had sufficient information to put him on notice that it was possible she was in Illinois or Minnesota."' This statement is speculative, [2]at best and overly simplistic given the ease and frequency with which people moved from state to state at the end of the 20th century. The court's statement implies that a putative father must attempt to protect his rights in every state where the birth mother might be.

That Heidbreder did not register in Illinois, where he believed Carton was, or in Iowa, where he believed Carton was not, is irrelevant to the analysis. Registration in either state would not have saved Heidbreder under Minnesota law. Registration in either Illinois or Iowa would not have entitled Heidbreder to notice under Minnesota's statutory scheme. Nor

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[2] The court takes umbrage at the suggestion that its statement is speculative and asserts that Heidbreder had sufficient information to believe that Carton was in Minnesota because, of course, a "scared and confused" pregnant teenager would return to her mother despite their bad relationship. This, too, is pure speculation. Moreover, the record makes it clear that Heidbreder knew that Carton had a bad relationship with her mother and had been told by Carton that she would "never move to Minnesota with her mother." Heidbreder Dep. Tr. at 32, 49-50; Carton Dep. Tr. at 32-33. Heidebreder testified:

> Because for one thing, I didn't think she -I didn't she told me she would never want to live up there because when we were together I told her if she wanted to be around her brothers and sisters that maybe I could transfer, and she said no, I'm not going to follow her. And she said she would never ever move with her mom. And her mom and her barely got along at all. And she told me she didn't like the family she loved them, but she didn't like the family up here because her grandparents and her were estranged and no one would accept her pregnancy. And she said they wouldn't ,let her anybody up here wouldn't her mom kicked her out of the house in the first place, so I wouldn't think that she would move up here with her mom. And she said she just didn't like the people up here.

Hedibereder Dep. Tr. at 49-50. Thus, Heidbreder had every reason to believe that Carton was not in Minnesota.

is it true that Heidbreder's registration in another state would have been clear and convincing evidence that it was not possible for him to register in Minnesota or that his failure to register in this state was through no fault of his own.

What matters here is that Heidbreder did not know where Carton was when K.M.C. was born did not find out where she was until the 31st day after K.M.C.'s birth, and then immediately registered with the Minnesota Fathers' Adoption Registry. Therefore, I would conclude that Heidbreder demonstrated by clear and convincing evidence that it was not possible for him to register within the period of time provided in Minn. Stat. § 259.52 subd. 7 (2000), and that his failure to do so should be excused.

II.

If, as the court concludes Heidbreder's failure to register is not excused under section 259.52, subdivision 8, then Heidbreder's interest in maintaining his parental rights has been denied protection under the Due Process Clause. *See Lehr v. Robertson,* 463 U.S. 248, 261 (1983). A father is entitled to due process when he "demonstrates a *full* commitment to the responsibilities of parenthood by `com[ing] forward to participate in the rearing of his child.'" Id. (quoting *Caban v. Mohammed,* 441 U.S. 380, 392 (1979)).

Here, Heidbreder demonstrated a *full* commitment to the responsibilities of parenthood. Heidbreder clearly communicated to Carton that he supported their having the child and that he was opposed to adoption.[3] In his deposition,

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[3] The court disdainfully dismisses Heidbreder's opposition to adoption because he believed it was "not right." Is the court saying that it will tell a father, or even a mother, what reasons he or she may have for not wanting his or her child adopted? It seems to me that any father or mother sincerely desiring to take on the responsibility of being a parent would believe that adoption was "not right" for his or her children. One wonders what point the court is trying to make.

Heidbreder testified: Q. Did you put her on your checking account?

A. I talked to her about it.

Q. Did you do it?

A. No. She didn't want to.

A. [I] told her she had more support and she didn't need to do that.

Q. So you didn't tell her that you would support whatever decision she -would make?

A. I would not support adoption or abortion.

Q. And you said earlier that you indicated to her she had a lot of support for having the child?

A. Right.

Q. Working with you, right?

A. Right.

Heidbreder Dep. Tr. at 25, 39, 55. Heidbreder also went to Carton's medical appointments with her and they lived together for a period of time during Carton's pregnancy. At a minimum, this signifies Heidbreder's effort to provide emotional and moral support to Carton and his intention to establish a personal relationship with K.M.C. Evidently, the court counts the fact that they did not remain together as a strike against Heidbreder.

According to the court, "[t]he record is also void of any evidence that Heidbreder provided, or attempted to provide, financial support to Carton during her pregnancy or to K.M.C. following her birth." This assertion relies on a mischaracterization of the record and is, at least in part, misleading. In fact, Heidbreder could not have provided financial support to Carton and K.M.C. following the birth for the same reason he could not timely register under section 259.52, subdivision 7. He did not know where they were and,

given Carton's family's rejection of Heidbreder's involvement in Carton's life, there was no viable vehicle for providing financial support. More important, however, is the fact that K.M.C. was placed for adoption two days after her birth and, according to the court, Heidbreder's parental rights were terminated 30 days after her birth.

With respect to the time period before K.M.C.'s birth, the court fails to recognize that, while Carton provided the money for the first month's rent and security deposit for their apartment, Heidbreder also signed the lease, thereby making himself financially responsible for the rent each month. Heidbreder testified that he talked with Carton about putting her name on his checking account, but Carton did not want this. Heidbreder testified, "I generally felt that my money was her money [ ]." Together, they shared the cost of the food and groceries and Heidbreder's mother and family bought maternity clothes for Carton. Thus, the record does not support the assertion that Heidbreder did not provide or attempt to provide financial support to Carton during her pregnancy.

When Carton left Iowa, Heidbreder maintained contact with her via e-mail, while also attempting to locate her through Carton's family and friends. Although only 19 years of age, Heidbreder talked with an attorney about child support and visitation rights. Heidbreder wasted no time in registering with the Minnesota Father's Adoption Registry once he learned where Carton was located. In sum, Heidbreder did nothing to avoid the responsibilities of parenthood; rather, each action he took had the effect of embracing those responsibilities. When viewed without hostility toward this father, the only reasonable conclusion based on the record before us, is that Heidbreder took steps that evince a clear effort on his part to come forward to participate in the rearing of his child.

The court relies heavily on *Lehr* to conclude that "the statutes, as applied to Heidbreder, adequately protected his opportunity to establish a relationship with K.M.C." In *Lehr,* the Court determined that the father, who was a New York resident, was presumptively capable of asserting and protecting his own rights, but failed to do so having waited 2 years before coming forward to assert paternity. 463 U.S. at 262-65. Unlike the father in *Lehr,* Heidbreder made sure that Carton knew that he wanted to participate in the rearing of K.M.C. even before K.M.C.'s birth. Heidbreder, however, had no knowledge of where Carton lived and thus, was not capable of protecting his rights. Because *Lehr* did not involve a father who tried at every turn to grasp the opportunity to develop a relationship with his offspring and accept some measure of responsibility for his child's future, the court's reliance on *Lehr's* holding is misplaced.

In *Lehr,* the Court stated:

> The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he asps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development.

Id. at 262. It is clear, as discussed above, that Heidbreder grasped the opportunity and has demonstrated a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child.[4] For this

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[4] The court asserts that Heidbreder's actions did not "unequivocally indicate an intent to assume full custody" of his child. Whether he indicated an intent to assume "full custody" is not the question to be answered. The correct question is whether he "demonstrate [d] a full

reason, Minnesota's statutory scheme as interpreted by today's decision, does not adequately protect Heidbreder's parental rights and results in a denial of due process. Put bluntly, section *259.52,* subdivision 8 exists to protect any father who is not otherwise entitled to notice under section 259.49, subdivision l, and who did not register before the expiration of the 30day period set forth in section 259.52, subdivision 7, if the father can demonstrate by clear and convincing evidence that it was not possible for him to register, that it was not his fault for having failed to register, and that he registered within ten days after it became possible to do so. If subdivision 8, on the facts presented here, is read, as the court does, to exclude a father such as Heidbreder from its protection, then the statutory scheme fails to protect a father's opportunity to form the parent-child relationship and, consequently, violates due process.

A father's biological connection with his child equips him to make uniquely valuable contributions to the child's development. *See Lehr,* 463 U.S. at 262. *By* its arrogance[5], today's decision forecloses the possibility that the best interests of a child can be met by having a permanent and stable relationship with the child's natural father. In doing so, the decision exposes the inadequacies of a system that fails in protecting both the rights of fathers and the best interests of the children who, absent some unfitness on the father's part, need them.

ANDERSON, Paul H., Justice (dissenting).

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commitment to the responsibilities of parenthood by `com[ing] forward to participate in the rearing of his child.'" *Lehr, 463* U.S. at 261 (quoting *Caban,* 441 U.S. at 392). 1 conclude, and the record supports, that he did.

[5] The court's arrogance lies in its hostility to putative fathers generally, and to this father specifically, as well as in its reading cut of Minnesota's statutory scheme section 259.52, subdivision 8.

I join in the dissent of Justice Page.

GILBERT, Justice (dissenting).

I join in the dissent of Justice Page.

DISSENT

ANDERSON, Paul H., Justice (dissenting).

I conclude that the majority opinion has an unnecessarily broad reach. The opinion's broad reach is especially problematic for putative fathers who, with the most honorable intentions, seek to assert and fulfill their rights, duties and obligations. Therefore, I am in general agreement with the conclusions reached by Justice Page and join his dissent. I am, however, compelled to add a proviso. I do not concur in the assessment that the majority opinion is arrogant and hostile.

STATE OF MINNESOTA
IN COURT OF APPEALS
CO-01-739

Dale "J.R." Heidbreder,

Appellant,

vs.

Kathleen Jean Carton,

a/k/a Katie Carton, a/k/a Kate Carton,

Respondent,

M.J.P., et al.,

Respondents.

Filed December 11, 2001

Affirmed

Toussaint, Chief Judge

Steams County District Court

File No. F80052159

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Considered and decided by Shumaker, Presiding Judge, Toussaint, Chief Judge, and Schumacher, Judge.

SYLLABUS

I. A father who cohabitated with the mother for one month during the pregnancy but not "openly living with" the natural mother so as to be entitled to notice of an adoption petition hearing under Minn. Stat § 259.49, subd. 1(4) (2000).

II. A father registering under the Fathers' Adoption Registry 31 days after the child's birth, because he did not previously know the mother's whereabouts, has not timely registered under Minn. Stat. § 259.52, subd. 7 (2000).

III. The requirement that a father timely register under Minnesota's Fathers' Adoption Registry statute does notviolate the due-process or equal-protection clauses.

OPINION

TOUSSAINT, Chief Judge

In this paternity proceeding, Dale Heidbreder appeals from the summary judgment entered in favor of the adoptive parents of his child. Because the district court correctly concluded that (1) Heidbreder was not entitled to notice of the adoption hearing; (2) his registration with the Fathers' Adoption Registry was untimely and it was possible for him to timely register; and (3) the registry statute did not violate his rights to due process of law and equal protection, we affirm.

FACTS

Appellant Dale Heidbreder, biological father of K.M.C., commenced this paternity action against K.M.C.'s natural mother, respondent Kathleen Carton. Adoptive parents, M.J.P. and M.B.P., intervened in the district court and are respondents on appeal.

It is undisputed that Heidbreder and Carton are the biological parents of K.M.C. Carton informed Heidbreder of the pregnancy soon after conception In November 1999. They discussed their options, including marriage, abortion, and adoption. They were both living in Iowa at the time, Carton at home with her mother and sisters.

Due to family conflict resulting from the pregnancy, Carton left the family home during the pregnancy. She spent some time with a family friend in Illinois and some time with her father in Bettendorf, Iowa. In May 2000, she and Heidbreder resided together in an apartment in Fort Madison, Iowa, but by June 2000, Carton had moved to Minnesota. She did not share her plans with Heidbreder, but he was aware that, about the time she left the apartment, her mother and sisters were moving to Minnesota. Carton stayed with her grandparents for several days in the St. Cloud, Minnesota, area and then moved to a home for pregnant teens where she remained until she entered the hospital.

Except during their cohabitation, Carton did not keep Heidbreder informed of her whereabouts. Heidbreder knew something about Carton's friends and family, however, so when she left the apartment in June 2000, he called her parents and friends to try to locate her. Although Carton and Heidbreder continued to communicate by e-mail, Carton did not reveal her whereabouts to Heidbreder; neither did Carton's friends or family.

While at the home for pregnant teens, Carton investigated adoption. She learned about the adoption registry and parents' rights regarding adoption. She eventually selected M.J.P. and M.B.P, the intervenors, as adoptive parents.

On August 12, 2000, Carton gave birth to K.M.C. at a St. Cloud hospital. No father was noted on the birth certificate. Two days later, K.M.C. was discharged into the

custody of her adoptive parents, where she remains to this date.

On September 12, 2000, 31 days after K.M.C.'s birth, Heidbreder heard from an acquaintance that Carton had given birth to a girl and possibly had chosen adoption in Minnesota. Heidbreder sent Carton an e-mail to which she responded, saying she would call him that night. Heidbreder then found the website for Minnesota's adoption registry, phoned registry, and sent the forms, postmarked September 12. When Carton phoned him in the evening, she explained that she was living in St. Cloud, had chosen adoption, and thought it was too late for him to register.

On October 23, 2000, Heidbreder commenced this paternity action. Carton answered, alleging that Heidbreder had failed to timely register. The adoptive parents' motion to intervene was granted. On December 26, 2000, the adoptive parents moved to dismiss the action because no putative father had timely registered. On March 5, 2001, tire district court granted the adoptive parents' motion for summary judgment.

On appeal, Carton concurs with the adoptive parents' brief and argument. Children's Home Society of Minnesota, Inc., and Lutheran Social Services of Minnesota, Inc., appear as amici curiae.

ISSUES

I. Was appellant entitled to notice of the adoption petition hearing because he "openly lived with" the mother under Minn. Stat. § 259.49, subd. 1(4) (2000)?

II. Did appellant fail to timely register under the Fathers' Adoption Registry statute, Minn. Stat. § 259.52 (2000)?

III. Does the Fathers' Adoption Registry as applied to appellant violate the dueprocess or equal-protection clauses?

ANALYSIS

On appeal from summary judgment, we ask two questions: whether there are any genuine issues as to any material fact, and whether the district court erred in its application of the law. *State by Cooper v. French, 460* N.w.2d 2, 4 (Minn. 1990).

I.

Notice of Adoption Proceedings

It is mandatory that certain individuals receive notice of an adoption hearing before it may proceed. Minn. Stat. § 259.49, subd. 1 (2000). Not all putative fathers have a right to notice of an adoption proceeding. *See Lehr v. Robertson, 463 U.S.* 258, 103 S. Ct. 2985 (1983) (approving statutory notice provision analogous to Minnesota's). If a father is not entitled to notice of the adoption proceeding, his consent is not required for the adoption. Minn. Stat. § 259.24, subd. 1(a) (2000).

Heidbreder argues that he was entitled to notice of the adoption proceeding because he falls within one category of individuals entitled to notice. He claims he is the person who, under the mandatory notice statute, "is openly living with the child or the person designated on the birth certificate as the natural mother of the child or both." Id. § 259.49, subd. 1 (4). The district court concluded that the provision means that one who is openly living with the child or mother after the birth is entitled to notice. We agree.

It is implicit in Minnesota's adoption statutes that the adoption petition is brought on behalf of a living child. *See* Minn. Stat. § 259.23, subd. 2 (2000) (petition "shall allege * * * [t] he date of birth of the child."). Thus, the adoption-notice statute's use of the present tense, "is living openly with," refers to the individual residing with the child or mother after the child's birth. *See Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995) (stating "[w]here the intention of the legislature is clearly manifested by plain unambiguous language * * * no construction is necessary"). Therefore, Heidbreder and Carton's brief cohabitation only during the pregnancy does not entitle him to notice of the adoption proceeding.

II.

Failure to Timely Register

For fathers excluded from the mandatory-notice provision, Minnesota's Fathers' Adoption Registry provides a central location to record the identity and location of a putative father "interested in a minor child who is, or is expected to be, the subject of an adoption proceeding." Minn. Stat. § 259.52, subd. 1 (2000). If the putative father registers by providing the requisite information to the department of health "no later than 30 days after the birth of the child," then his name will be uncovered during the mandatory search of the registry prior to granting an adoption petition. Id., subds. 2 & 7.

If the putative father does not timely register, his name will not appear during the search, and he will not be entitled to notice of the adoption proceedings. *Id.*, subd. 8. He also loses his right to assert any interest at the proceeding and "is considered to have abandoned the child." *Id.* The failure to register also constitutes "prima facie evidence of sufficient

grounds to support termination of the putative father's parental rights." *Id.* Given the severe consequences of failure

to register, the statute provides an exception with added protection for the putative father. A putative father who proves by clear and convincing evidence that

(i) it was not possible for him to register within the period of [30 days after the birth of the child];

(ii) his failure to register was through no fault of his own; and

iii) he registered within ten days after it became possible for him to file,

is considered to have timely registered. Id. In applying this exception, however, "[a] lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." Id.

A. *Impossibility*

The parties agree that Heidbreder registered one day late. He registered on the 31st day and was required to register within 30 days after the child's birth. Nevertheless, he argues that he timely registered because it was impossible for him to register within 30 days. The district court concluded that Heidbreder did not fall within the statutory exception. We agree.

Findings of fact are reviewed under a clearly erroneous standard and will not be reversed on appeal unless the reviewing court is left with the "definite and firm conviction that a mistake has been made." *In re Guardianship of Dawson, 502* N.W.2d 65, 68 (Minn. App. 1993) (citation omitted), *review denied* (Minn. Aug. 16, 1993). The district court made findings that it was possible for appellant to timely register and that it was his own fault for failing to do so. The court listed the undisputed facts showing that Heidbreder had time to take action and knew of Carton's possible locations, but that he failed to adequately assert his

rights. It is -undisputed that he: (1) knew of three states, Iowa, Illinois, and Minnesota, to which Carton had recent ties; (2)

knew as early as November 1999 that she was carrying the child; (3) knew that she planned to give birth; (4) knew that the due date was in August 2000; and (5) knew by no later than June 2000 that he and Carton would not marry and that Carton did not want to share her whereabouts with him. These findings were not clearly erroneous, and they do not support a conclusion that registration was impossible for appellant.

It should be noted that once Heidbreder decided to register in Minnesota, he accomplished the task in less than one day. Prior to that, he had only phoned Carton's mother, father, and friends and* e-mailed her in an effort to learn her whereabouts. Although he had had nine months to act, during that time he did not retain a lawyer, he did not commence a paternity action, he did not register as a putative father in any state, and he did not otherwise arrange to become a parent. The law requires that a putative father do more to create a legal tie to the child or mother.

B. *Fraud*

Heidbreder argues that it was impossible for him to register within 30 days after the child was born because the mother "fraudulently concealed material facts surrounding her adoption plan." He argues that "he did not know the date or place of [the child's] birth until [respondent] conveniently called him thirty-one days later." He also argues that Carton fraudulently concealed her whereabouts, thereby preventing him from knowing where an adoption might occur and where he should register.

Insofar as appellant relies on fraudulent concealment as an exception to the statute's requirements, the question is one of statutory construction and is reviewed by this court de

novo. See In re Paternity of JA. V., 547 N.W.2d 374, 376 (Minn. 1996).

The clear language of the adoption registry statute does not include an express or implied fraud exception. The legislature could have provided for this exception if it deemed it necessary or important to do so. Cf. Minn. Stat. § 259.24, subd. 6a (2000) (adoption statute makes parent's consent irrevocable "except upon order of court of competent jurisdiction after written findings that consent was obtained by fraud.") Moreover, it is not for this Court to read an exception into the statute, *see, e.g., State v. Tennyson,* 212 Minn. 158, 161-62, 2 N.W.2d 833, 835 (1942) ("Where a statute is couched in broad and comprehensive language admitting of no exceptions, the court is not justified in engrafting thereon exceptions, however much it may deem the public welfare to require them."), or find substantial compliance when statutory requirements are not met, *see Matter of Petition of Gaus,* 578 N.W.2d 405, 407 (Minn. App. *1998), review denied* (Minn. July 30,1998) (no substantial compliance where affidavit allegedly prepared within filing period without steps taken to confirm delivery and no excuse for not complying with statute).

Not only did the legislature decline to create a fraud exception, it expressly eliminated the putative father's defense that he did not know of the birth or pregnancy. "[L]ark of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." Minn. Stat. § 259.52, subd. 8. Conversely, the mother is under no obligation to reveal the pregnancy or birth. Eliminating this defense is a legislative declaration that putative fathers must affirmatively act or permanently lose their parental rights.

In light of this clear statutory language, Heidbreder's reliance on fraud and equitable-estoppel cases for the

proposition that Carton had a duty to disclose her whereabouts to him are simply misplaced. *See Richfield Bank & Trust Co. v. Sjogren, 309* Minn. 362, 365, 244 N.W.2d 648, 650 (1976) (fraud may result from suppression of facts that one party is under legal or equitable obligation to communicate to another, and that other party is entitled to have communicated to him). Minnesota law does not impose a duty on unmarried parents to disclose information to each other. For example, the mother has no duty to place a known unmarried father's name on the child's birth certificate. *See* Minn. Stat. § 144.215, subd. 3 (2000) (setting out situations requiring entry of father's name); Minn. R. 4600.1000 (1999) (minimal information on birth certificate includes "date and place of birth; birth name of mother; full name of father (except for out of wedlock births); signature of certifier"). Similarly, the petitioner not the mother, is required to notify the eligible putative father of an adoption proceeding. Minn. Stat. § 259.21, subd. 7 (2000).

Heidbreder's attempt to carve out a broader exception to the statute also lacks policy support. The law creating the registry clearly balances the competing interests of the child, the mother, the father, and the adoptive parents. It provides rights to putative fathers, but it also seeks finality to the consent issues so that an adoption petition may proceed. Thirty days after the child is born, the rights of the unwed father who has no substantial tie to the child or mother give way to the child's interest in stability and parentage finality. *See, e.g., In re Petition of K 1 R. and D.F.R., 293 111. App. 3d 49, 55,* 687 N.E. 2d 113, 117 (Ill.Ct. App. 1997) (construing similar putative father registry statute). Therefore, the district court correctly concluded that Carton had no duty to disclose her adoption plans, her whereabouts, or the place or date of the child's birth to Heidbreder. Because Heidbreder's claim to have timely registered is based on a claim of fraudulent concealment and Carton owed no duty to

disclose, he has not proved by clear and convincing evidence that he timely registered. He also cannot prevail on his statute of limitations argument, which relies on fraud to toll the running of the period for registration.

III.

Constitutional Rights

Heidbreder argues that Minnesota's Fathers' Adoption Registry as applied to him violates the due-process and equal-protection clauses of the United States Constitution. Minnesota laws are presumed constitutional. Minn. Stat. § 645.17 (3) (2000); Guilliams v. Comrn'r of *Revenue,* 299 N.w.2d 138, 142 (Minn. 1980). This court "proceeds with extreme caution before declaring a statute unconstitutional." *McGuire v. C & L Restaurant, Inc., 346* N.W.2d 605, 611 e (Minn. 1984). The party challenging the statute bears the burden of demonstrating beyond a reasonable doubt that the statute violates the constitution. Id.

A claimed violation of procedural due process triggers a two-part analysis. Cress v. *Grassinann,* 536 N.w.2d 39, 43 (Minn. App. 1995), *review denied* (Minn. Sept. 28, 1995). First, the court must determine whether a substantial right of life, liberty, or property is affected. *Id.* (citation and quotation omitted). Second, in determining what process is due, the court balances "the private interest at stake, the government interest in administrative efficiency and the risk of erroneous deprivation under current procedures." Id. (citation and quotation omitted). The district court concluded that Minnesota's statute does not violate Heidbreder's procedural due-process rights. We agree.

In Lehr v. Robertson, 463 U.S. 248, 103 S. Ct. 2985 (1983), a putative father challenged New York's analogous adoption notice and putative fathers' registry statutes. *See id. at* 251-52, 103 S. Ct. at 2988. The Court concluded that the

putative father's actions define his constitutional protections. Id. at 261,103 S. Ct. at 2993.

> If he grasps that opportunity [to develop a relationship with his child] and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.

Id. at 262, 103 S. Ct. at 2993-94. While states are required to protect an unmarried father's interest in establishing a relationship with his child, they are also allowed to define the conduct in which the father must engage to assume a parental role in the child's life.

Minnesota's Adoption Registry adequately protects the father's rights. As in parentalrights termination cases, the parent must act to preserve his rights. *See Matter of Welfare of H.G.B., 306* N.W.2d 821, 825 (Minn. 1981) (stating that "[t]he law secures their parental right only so long as [parents] shall promptly recognize and discharge their corresponding obligations.") (citation omitted). The registry (1) clarifies who must receive notice of an adoption proceeding; (2) expands a putative father's access to the adoption proceedings; and (3) ensures that adoptions, once finalized, remain undisturbed. Minn. S. Ct. Foster Care & Adoption Task Force Final Report (Jan. 1997). Thus, the registry balances the important interests at stake; the father's, the mother's, the child's, and the adoptive parents. As. Heidbreder himself established, the registry is easily accessible. Therefore, the district court correctly required that Heidbreder adhere precisely to the procedural requirements of the statute.

The equal-protection clause "require[s] that all persons similarly situated be treated alike under the law." In *re Harhut,* 385 N.W.2d 305, 310 (Minn. 1986). Legislative

classifications of persons, however, will generally be upheld if rationally related to a legitimate state interest. Id.

While biological mothers and fathers have different legal rights to "veto an adoption and * * to prior notice of any adoption proceeding," the different rights are legitimately tied to "the existence or nonexistence of a substantial relationship between the parent and child." *Lehr, 463* U.S. at 266, 103 S. Ct. at 2996. Here, Carton carried the child, but Heidbreder never established any custodial, personal, or financial relationship with the child. Therefore, the state could afford the parents different legal rights. Id. at 267-68, 103 S. Ct. at 2996-97. Accordingly, the district court correctly concluded that the statute does not violate Heidbreder's right to equal protection under the United States Constitution.

DECISI0N

The district court correctly concluded that appellant was not entitled to notice of the adoption proceeding, that he failed to timely register under the Fathers' Adoption Registry, and that the registry did not violate his rights to due process and equal protection.

Affirmed.

STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF STEARNS SEVENTH JUDICIAL DISTRICT

Dale "J.R." Heidbreder, Plaintiff,	)	COURT FILE NO. F8-00-52159
and	)	
Kathleen Jean,Carton, a/k/a, Katie Carton, a/k/a Kate Carton	)	
Defendant, and M.J.P. and M.B.P.,	)	
Intervenors	)	

The petitioner in this case, the putative father has initiated paternity action. The intervenors, the adoptive parents have brought a motion for summary judgment on the pending paternity action. The District Court heard the arguments on January 22, 2000.

Thomas Jacobson represented plaintiff. Jessica Maher and Wright Walling represented the intervenors. Jill Pinkert represented the defendant, but while supporting the intervenors" motion, she elected not to appear at the hearing.

NOW, having considered the facts of the case, the proceedings, and the arguments of the parties, together with the applicable law, this court **ORDERS**:

THAT, the intervenors' motion for summary judgment is **GRANTED**.

THAT, the attached memorandum is made part of this **ORDER**.

LET JUDGMENT BE ENTERED ACCORDINGLY
Dated: March 5, 2001.

S/
Richard T. Jessen
District Court Judge

MEMORANDUM

Even though the intervenors brought a motion to dismiss the pending paternity action, the motion itself does not allege failure to state a claim, and does not address the sufficiency of the pleadings. Instead the intervenors argue facts and questions of law. In essence the motion brought by the intervenors is a motion for summary judgment.

FACTS NOT IN DISPUTE
(OR STATEMENT OF FACTS)

1. K.M.C. was born in Minnesota on August 12, 2000.

2.The mother placed the child for adoption on August 14, 2000.

3. In Late November of 1999 Katie Carton, the defendant in this case, discovered that she was one or two weeks pregnant.

4. During depositions, Katie admitted that the plaintiff is the father of K.M.C.

5. Katie's parents are divorced.

6. At the time she became pregnant Katie lived with her mother and her siblings in Ft. Madison, Iowa.

7. Katie's mother was upset with her daughter and Katie had to stay with her father in Bettendorf for sometime.

8. Katie's mother evicted Katie, so she had to live with a couple in Carthage, Illinois. Katie did not tell the plaintiff where she was going.

9. After a two weeks stay in Illinois, Katie returned to Ft. Madison and moved in with the plaintiff They openly lived together for about a month in June of 2000.

10. Katie's mother moved to Minnesota where part of her family was residing.

11. Plaintiff and Katie, shortly after discovering the pregnancy, discussed and rejected the possibility of marriage, abortion, or adoption of the child.

12. In mid June 2000, Katie left the plaintiff without telling him where she was going to stay.

13. Plaintiff asked Katie' relatives; her father and her friends where she was. But, following Katie's instructions, no one told him that she was in Minnesota.

14. Plaintiff asked Katie's mother where Katie was, but she also refused to tell him her whereabouts.

15. Advised by an adoption agency representative, Katie did not list the plaintiff as a father on the K.M.C.'s birth certificate (left blank).

16. Katie did not want the plaintiff to know about the child's birth and did not want him to assert his parental rights.

17. On September 12, 2000, J.R. learned from a friend that Katie has given birth to a child in Minnesota and that she was giving the baby for adoption.

18. The same day, plaintiff registered in the Minnesota Father's Adoption Registry.

19. Later on that day plaintiff spoke with Katie over the phone and she personally told him about the adoption and that she, was living in Minnesota.

ISSUES PRESENTED

I. DOES THE FAILURE TO TIMELY REGISTER PRECLUDE THE PLAINTIFF FROM STATUTORY EXCEPTION UNDER MINN. STAT. § 259.52, Subd. 8, OR UNDER MINN .STAT, § 259.49 Subd. 1(b)(4)?

II. IS THERE EVIDENCE OF FRAUD THAT WOULD SUPPORT J.R. ' S CLAIM THAT HE WAS FRAUDULENTLY DEPRIVED OF THE OPPORTUNITY TO ASSERT HIS PARENTAL RIGHTS AND SHOULD THE 30-DAY STAUTORY LIMIT FOR REGISTRATION IN THE FATHER'S ADOPTION REGISTRY BE TOLLED?

III. WILL THE PLAINTIFF BE DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION IF HE IS NOT ALLOWED TO WITHOLD HIS CONSENT TO THE ADOPTION OF HIS DAUGHTER?

IV. IS THE DEFENDANT BARRED BY THE DOCTRINE OF EQUITABLE. ESTOPPEL FROM ASSERTING THAT PLAINTIFF'S REGISTRATION WAS UNTIMELY?

CONLUSIONS OF LAW

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on

file, together with the affidavits, if any, show that there is no genuine issue as to any material fact `and either party is entitled to judgment' as a matter of law." *W.J L. v. Bugge, 573* N.W.2d 677, 680 (Minn. 1998) (quoting Minn. R. Civ. P. 56.03). No genuine issue of material fact exists where the record could not lead a rational trier of fact to find for the nonmoving party. *DLH, Inc. v. Russ, 566 N.W.2d* 60,69 (Minn. 1997).

I. DOES THE FAILURE TO TIMELY REGISTER PRECLUDE THE PLAINTIFF FROM ASSERTING HIS PARENTAL RIGHTS AND DOES HIS FAILURE FALL WITHIN A STATUTORY EXCEPTION UNDER MINN. STAT. § 259.5.2, Subd. 8, OR UNDER MINN. STAT, § 259.49 Subd. 1(b)(4)?

A. *Impossibility to register in the Father's., Adoption Registry within the statutory period provided by..Allinn. Stat. §2.59-52 Subd 8.*

The Minnesota Department of Health has established the Fathers' Adoption Registry. The purpose of the Registry is to determine "the identity and location of a putative father interested in a minor child *who* is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to a notice under section 259.49, subdivision 1, paragraph (a) orb ,clauses (1) to (7)." Minn. Stat. §259.52 Subd. I (a) (2000). In order for a putative father to be entitled to a notice of adoption proceedings under the statute, he "must register no later than 3 0 days after the birth of the child." Minn. Stat. § 259.52 Subd. 7. A putative father who fails to timely register is barred from bringing or maintaining an action to assert any interest in the child; is considered to have waived and surrendered any right to a

notice of any hearing for adoption of the child; and is considered to have abandoned the child. Minn. Stat. §259.52 Subd. 8. The legislature has enacted the statute to protect the child's best interest and to ensure that a child will be given a chance for an early permanent placement and stable environment. It is why a failure to register under the same subdivision of the statute "'Is prima facia evidence of sufficient grounds to support termination of the putative father's parental rights..." Minn. Stat. § 259.52 Subd. 8.

K.M.C. was born on August 12, 2000. Under the statute J.R. should have registered in the Registry either before or in any case, not later than 30 days after the child was born. It is undisputed fact that J.R.'s letter and attempt to register was made thirty-one days after K.M.C.was born. However J.R. claims that there are a couple of exceptions under the statute, which if applicable in his case, would make his late registration valid. The first exception is part of Minn. Stat. §259.52 Subd. 8 that reads:

> "A putative father who has not timely registered under subdivision 7 is considered to have timely registered *if he proves by clear and convincing evidence* that:
>
> (i) it was not possible for him to register within the period specified in subdivision 7;
> (ii) his failure to register was .through no fault of his own; and
> (iii) he registered within ten days after it became possible for him to file. *A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register."* Minn. Stat. § 259.52 Subd. 8 (2000). (Emphasis added).

A careful reading of the statute shows that in order for J.R.'s late registration to be considered as timely he must prove by clear and convincing evidence all listed conditions. J.R. has proved by clear and convincing evidence that he registered within ten days after he learned where Katie was and that the baby would be given for adoption. However, the remaining two conditions seem to be troublesome in this case. The putative father has the burden of proving by clear and convincing evidence two things: that it was not possible for him to register within the time limit; and that the failure to register on time was through no fault of his own. There are undisputed facts suggesting that J.R. could have registered on time and could have protected his parental rights. J.R. knew that Katie was pregnant and that she was going to give birth in August of 2000. It is true that she left for Minnesota without telling him; and it is true that she instructed her parents and her friends not to tell J.R. where she was. But it is also true that J.R. was aware of the fact that Katie was hiding from him and that there were just a few places where she could have stayed. J.R. knew that she could stay in Iowa with her father; in Illinois where she stayed just before moving in with J.R. in June of 2000; or in Minnesota where her mother and grandparents lived. Was it possible for him to register in any of these three states and to more definitely manifest his desire to protect his parental rights? The answer is simple -it was possible for him to try to protect his rights in any of the three states. J.R. has not produced clear and convincing evidence that the failure to register was through no fault of his own. Had J.R. made efforts to protect his parental rights in any of the states, he would have given this court more convincing evidence that he made affirmative steps to protect his parental rights.

The plaintiff cites a case, in which the court held that despite the fact that the father was ten days late to register, he

had "substantially complied" with the *statute. In the Matter of the Welfare of A.,M.P., 507 N.W.2d. 616, 621* (Minn. Ct. App. 1993). Setting aside the fact that the case was based on a statute preceding the current one, and that the new statute made the required registration period significantly shorter (30 days only), the AA1 P case is distinguishable from the present one. Indeed, in A.11.P., the court held that the putative father had "substantially complied" with the statute, *but in that case* the father signed the "Declaration of Parentage" acknowledging that he was the biological father on time. Then, well within the statutory limit, he *submitted his* declaration to the county. However, the county misplaced his declaration and the division of vital statistics received it forty-three days after he submitted it, and ten days after the statutory period had expired. The court found that the father had substantially complied with the statute and that *"under the facts of this case...* M.M.'s declaration of parentage must be treated as timely filed." Id. at 621. (Emphasis added.) None of the facts of the present case suggests that someone else, or that the Father's Adoption Registry has delayed a timely signed and filed form. It is why this court cannot apply the A.M..P. standard and cannot conclude that J.R. has substantially complied with the requirements set in Minn. Stat. § 259.52. In a subsequent decision the court held that an imprisoned father who timely executed his parentage affidavit, but failed to file it on time, did not substantially comply with the statutory requirements. *In the Matter of the Petition of Gaus, 578* N.w.2d 405 (Mine. Ct. App. 1998).

In the present case J.R. was aware that Katie was trying to hide from him; he was aware that there were only a limited number of states where she could have stayed, but he failed to protect his parental rights. This court concludes that it was possible for J.R. to register in the Father's Adoption

Registry and that it cannot be said that his failure to timely register was through no fault of his own.

B. J.R. *and Katie's "living openly together" as defined by Minn. Stat. ,¢259.49 Subs.* 1 (b) (4).

J.R. also claims that he is entitled to a notice of the adoption proceedings, because he and Katie lived openly together for about a month in June of 2000. This argument, however, is without merit. Notice of adoption proceeding must be given to "... a person who is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both;" Minn. Stat. §259.49 Subd. 1(b)(4) (2000). This statutory provision applies only in those cases in which the father. lives openly with the mother *after the* child's birth and at the time when the adoption proceeding is initiated. The statute says, ", .. is openly living with the child..." Common sense would lead to the conclusion that the person entitled to notice of the adoptive proceeding "is" now, in present time openly living with the already born child. The United States Supreme Court interpreted a similar New York statute to require notice of adoption proceeding to be given to a person "openly living" with the child at the time of the adoption. *See, e.g., Lehr v. Robertson, 463 U.S.248, 251 (1983).*

II. IS THERE EVIDENCE OF FRAUD THAT WOULD SUPORT J.R.'S CLAIM THAT HE WAS FRAUDULENTLY DEPRIVED OF THE OPPORTUNITY TO ASSERT HIS PARENTAL RIGHTS AND SHOULD THE 30-DAY STATUTORY LIMIT FOR REGISTRATION IN THE FATHER'S ADOPTION REGISTRY BE TOLLED?

A. *J R. 's claim that he was-fraudulently deprived of the opportunity to register on time in the Father's Adoption Registry.*

The plaintiff also argues that Katie and her family fraudulently deprived him from his parental rights. He further argues that because of the alleged fraud his failure to timely register must fall within the exception provided by Minn. Stat. §2.59.52 Subd. 8 and his registration should be considered as timely. To find that there was fraud, this court must consider not only whether there was misrepresentation or a failure to disclose certain information by Katie, but also that she or her family had a duty to disclose this information to J.R.

l) Duty to disclose the mother's location and the child's birth.

Nondisclosure constitutes fraud when there is " a suppression of facts which one party is under a legal or equitable obligation to communicate to the other, *and which the other parry is entitled to have communicated to him." Witzman v, Lehrman, Lehrman & Flom, 601 N.W.2d* 179, 190 (Minn. 1999). (Emphasis added.) " A claim of fraud may not be based on failure to disclose a certain fact unless there is a duty to disclose that fact." *MacKenZie v. Summit National,* 363 N.W.2d 166,118 (Minn. Ct. App. *1985) (citing Richfield Bank &Trust Co., v. Sjogren, 244* N.W.2d 648, 650 (Mine. 1976). Even if this court finds enough evidence to conclude that Katie and her family intentionally suppressed information about her location and that perhaps prevented J.R. from timely registering in Minnesota, the question whether Katie owed J.R. duty to disclose this information cannot be answered affirmatively.

The legislature made the mother's duty to inform, the father of either the pregnancy or the child's birth irrelevant. The statutory language is unambiguous: "A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." Minn. Stat. §259.52 Subd. 8. However, the claim of fraud requires this court to specifically address the question whether Katie owed a duty to disclose information about her pregnancy, the child's birth, and/or her location.

A number of jurisdictions have dealt with a putative father's claim against those who have interfered with his parental rights, but "the courts have adeptly avoided a direct resolution of the validity of such *claims." Kessel* v. Leavitt, 511 S.E.2d 720, 754 (W. Va.1998). Even the Minnesota Court of Apeals was confronted directly with a father's claim of fraudulent concealment of his daughter's location, but the court simply affirmed the trial court's dismissal of the claim, without any further explanation. *Larson v. Dunn,* 449 N.W.2d. 751 (Min. Ct. App. 1990). Similarly, the highest court of Michigan has declined to rule upon the validity of a father's cause of action when the father claimed that the biological mother and the adoption agency fraudulently deprived him of relationship with his child by placing the baby for adoption without informing the father. *Daoud v. DeLeau, 565* N.W.2d 639 (Mich. 1997). Confronted with the issue, the Court of Appeals of New York, declined to vacate the adoption of a child, when the father claimed that it had been fraudulently obtained. *Robert 0. v, Russell. 604* N.E.2d 99 (N.Y. 1992). The New York court reasoned that "it is well settled that a natural mother has no obligation to... volunteer any information with respect to the father..." Id. at 597 [quoting *flatter of Jessica XX, 430* N.E.2d 896, 900 (N,Y. 1981)]. *In Robert 0* the court held for the mother basing its decision on the finding that there was no evidence that the

other tried to deceptively conceal her pregnancy from the father.. Id. at 101.

To date, only one court has directly addressed both a claim by a biological father that he had fraudulently been deprived of his parental rights and the question whether a biological mother owes duty to disclose her and the baby's whereabouts to the father. *See generally Kessel, 511 S E. 2d 720. In Kessel* the mother left West Virginia, and after staying in various states (including Minnesota) for short time periods, she gave birth to a child in California. The child was placed for adoption and eventually was adopted by a Canadian couple. The father meanwhile sought legal advice regarding his parental rights in West Virginia, and initiated a paternity action in his home state. Id. at 735. The Court, after a detailed analysis of the existing nationwide case
law, held that:

> "where a person has knowledge of information concerning a newborn child's birth or physical location, or indicates where and in whose care the child may be found, and the child's parent inquires of such person regarding his/her child's birth or physical location... such person may be held liable for fraudulently concealing information if he/she affirmatively, intentionally, and willfully fails to provide such information to the child's parent..." Id. at 756.

And if the language used by the West Virginia court establishes a valid cause of action for fraudulent interference with parental rights, against the biological mother and others who interfere with the father's ability to establish a parent-child relationship; the Court was unwilling to impose duty on the mother to reveal information about her pregnancy or adoption proceedings to the biological father. The court

expressly addressed this point by holding that "we do not impose upon a biological mother any affirmative duty to keep her child's biological father informed of the progress of her pregnancy or to relay to him any other information pertaining to a proposed adoption of the child other than that notice required to be given to the child's biological father pursuant to the applicable statutory or case law. " Id.

2) *Failure to disclose the baby's location and her placement for adoption in the present case is distinguishable from affirmative false and misleading statements in similar cases.*

The plaintiff has cited several cases in which the courts have dealt with biological mother's efforts to mislead a putative father in order to deprive him from the opportunity to assert his parental rights. It should be pointed out that there is a difference between affirmatively misleading statements and a refusal to give requested information. As already emphasized in the preceding section, concealment or an omission of material fact could be considered as fraudulent behavior only if the courts find the existence of duty to disclose such infonnation. *See, e.g.,* MacKenzie, 363 N. w. *2d at 118. See generally y itzman v. Lehrman, Lehrman &Florn, 601* N.w.2d 179, 190 (Minn. 1999) (holding that "in most circumstances professionals have no duty to disclose information concerning a client to nonclient, for purpose of fraud claim based on nondisclosure."). *See generally Special Force Ministries v. WCCO Television, 584* N.W.2d 789 (Minn.Ct. App. 1998) (holding that "fraud requires an affirmative misrepresentation, and a person generally has no duty to disclose material facts.").

In the present case there are no facts alleging that Katie or her parents made false statements or that they misrepresented any material facts. This is an important difference between J.R.'s claim and the several cases cited in

support of his argument that he is entitled to notice of the pending adoption proceedings. For example In *Re Doe,* cited by the plaintiff, the putative father had left the country to visit his ill, grandmother. *In re Doe, 638* N.E.2d 181, 182 (111.1994). During his absence the baby's mother heard rumors that he was seeing a former girlfriend. Very upset, she left the previously shared apartment, changed the hospital in which she was supposed to deliver the baby, and within just a few days of the delivery, placed the child for adoption without notifying the biological father. Then the mother and her family stonewalled the father by telling him that the baby had died during the delivery. The Illinois Supreme Court found that all of the father's attempts to locate the child were "frustrated or blocked by the actions of the mother." Id at 182. The court further concluded that "the parent's effort to establish or maintain parental interest in the child were thwarted, inhibited, hindered, or discouraged by the custodial parent or other interested persons." Id. 186-187. Applying these facts to the case the Illinois Supreme Court held for the father, regardless of the fact that he asserted his parental rights some twenty-seven days after the 30-day statutory period. However, *In re Doe is* distinguishable from the case at bar because, as noted in the previous section, omission or concealment of material fact may constitute fraud only if there is duty to disclose the information. *In re Doe* the court did not have to reach this issue because the mother and her relatives affirmatively misrepresented material facts when they lied to the father that the child died during delivery.

B. *If Minn. Stat. § 259.52, Subd 7, is construed as a statute of limitations, should the statute be tolled because of the alleged fraudulent behavior?*

J.R. claims that since Katie and her family intentionally withheld the information of the child's birth and location, and since this act constitutes fraudulent behavior, the

thirty day statutory period should be tolled because in essence Minn. Stat. § 259.52, Subd. 7, functions as a statute of limitations. The plaintiff supports his argument by giving the definition of "statute of limitation" from Black's Law Dictionary and by citing cases dealing with statutes of limitations. "A statute of limitations may be tolled if the cause of action is fraudulently concealed by the defendant." *Haberle v. Buchwald, 480* N.W.2d 351, 357 (Minn. Ct. App. 1992) (citing Collins v. *Johnson, 374* N.W.2d 536, 541 (Minn. Ct. App. 1955). Even if this court accepts the argument that Minn. Stat. § 259.52 Subd. 7 functions as a statute of limitations, still, as a preliminary step, the plaintiff has to prove the existence of fraud. Proving the elements of fraud would require evidence of an " affirmative act or statement which concealed a potential cause of action" and "that the concealment could not have been discovered by reasonable diligence". Id. (citing *Collins v. Johnson, 374* N.W.2d 536, 541 (Minn. Ct. App. 1985)). The plaintiff has not alleged facts which if true would have supported a claim of active, affirmative misrepresentation. Therefore, the only remaining issue is whether Katie and her family's efforts to conceal her location, the baby's birth and the fact that she was going to be placed for adoption are sufficient to support a cause of action based on fraud. As discussed in the preceding sections J.R.'s claim that he was not able to register on time in the Minnesota Father's Adoption Registry, because of fraud cannot be sustained. The plaintiff could not establish that there was a duty on either Katie or on her parent's part to inform him about her location and her intent to pace the child for adoption. *See* discussion *infra Part II* A.

III. WILL THE PLAINTIFF BE DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION IF HE IS NOT ALLOWED TO WITHOLD HIS CONSENT TO THE ADOPTION OF HIS DAUGHTER?

A. *Is a denial of J.R.'s right to withhold his consent in the pending adoption proceeding denial of constitutional right* of *procedural due process?*

J.R. asserts the claim that Minn. Stat. §259.52 is unconstitutional as applied to him. The United States Supreme Court was directly confronted with the same issue *in Lehr v. Robertson,* 4b3 U.S. 248 (1953}. "The Fourteen .Amendment provides that no State shall deprive any person of Life, liberty, or property without due process of law." Id at 2Sb. The court considered the nature of the interest in liberty far which the biological father claimed protection and the adequacy of the procedures that a state has provided for protection of this interest. The court stated that the connections bettiveen parent and a child have infinite variety and that: "It is self evident that they are sufficiently vital to merit constitutional protection in appropriate cases." Id. *In Lehr a father* who failed to register on the New York "putative father registry" challenged the constitutionality of the registry as applied to his case. The father argued that the registration scheme violated his procedural due process rights under the Constitution. .Analyzing the existing case law the court reaffirmed its position that "a natural father's relationship with his illegitimate child receives protection under the Due Process clause. . ." Id at 255. On the Due Process Clause claim, the court found most instructive the dissenting opinion written *in Caban. See Caban v. Mohammed, 441 U.S. 380 (1979).* Citing the dissenting opinion of *Caban,* the Court stated that: "Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." Id. at 260. The court further reasoned that a biological father would acquire "substantial protection under the due process clause...", when, "the unwed father demonstrates full commitment to the responsibilities of parenthood by `coming

forward to participate in the rearing of the child.' " Id. at 261 [citing *Caban, 441 U.S.,* at 392 (1979)]. The court did not underestimate the biological connection between the father and develop a parent-child relationship and to assume responsibility for their offspring. The court the child but noted," the mere existence of the biological link does not merit equivalent constitutional protection." Id. The key issue *in Lehr* and in the present case is not the existence of the biological connection, but the steps taken by the putative father to demonstrate "full commitment to the responsibility of parenthood by coming forward." The natural father has an opportunity to develop a relationship with his child and he would acquire full protection under the due process clause of the Constitution if he "grasps that opportunity and accepts some measure of responsibility for the child's future." Id. at 262. The Supreme Court noted that the New York putative father registry provided the biological father with a variety of options, which would enable them to establish the desired relationship with the child. The biological father could live openly with the child and support the child, or if he could not do that, he would be entitled to a notice of adoption proceedings if he registered in the registry simply by mailing a postcard to the putative father registry. The court reviewed the putative father registry and concluded that New York "has adopted a special statutory scheme to protect the unmarried father's interest in assuming a responsible role in the future of his child." The court concluded that the New York statute had reserved the opportunity for several categories of putative father to also noted that if the statutory scheme "were likely to omit many responsible fathers, and if qualification for notice were beyond the control of the interested putative father, it might be thought procedurally inadequate." Id. at 264. In *Lehr* the putative father could have registered simply by mailing a postcard to the registry, and the Supreme Court stated that " The possibility that he may have failed to do so because of his ignorance of the law cannot be sufficient reason for criticizing

the law itself." Id. The court further explained that the state interest "in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie(s) the entire statutory scheme also justif(ies) a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute." Id. at 265.

J.R. contends that Minn. Stat, §259.52 is unconstitutional as applied to him. However, it is clear that the statutory scheme has created a number of opportunities for a biological father to assert his parental rights and to grasp the opportunity to accept responsibility for the child's future. The putative fathers' registry in Minnesota adequately protects all registered biological fathers' rights and requires any prospective adoptive parent to search the registry, before a petition for adoption can be granted. Once a father is registered in the registry he is entitled to a notice of the adoption proceeding. The registry also allows a putative father to register any time before the child's birth but not later than 30 days after the child's birth. The registration form could be mailed or personally delivered. The Minnesota putative father's registry is similar to the New York registry discussed in *Lehr*. The United States Supreme Court reasoning in Lehr applies to J.R.'s case. The registry not only snakes it possible for J.R, the putative father, to protect his rights, and to grasp the opportunity to establish a relationship with his newborn child, but it also created a protective net. *See* Minn. Stat. §259.52, Subd. 8 (2000). A putative father is given the opportunity to register late and to withhold his consent to the adoption of his offspring if he proves by clear and convincing evidence that it was not possible for him to register, and that the failure to register was through no fault of his own.

In support of his argument the plaintiff also cites a Utah case in which the court held that the father did not have a reasonable opportunity to file his "Notice of claim" and protect his parental rights. In *Re Adoption of Baby Doe, 717 P.2d 686, 688* (Utah 1983). However, *Baby Doe is* distinguishable from the case at bar. In the Utah case, days before the child's birth, the father and the mother agreed that they would move together to another state as soon as the child was born. On August 24, he called her and told her that he had found place to live and a job and that he would take her to Arizona. The very next day, quite unexpectedly, one or more weeks before the due date, the mother gave birth to a child. On August 27, 1984, she consented to the adoption of her baby without telling the biological father. Meanwhile, he had tried to reach her, but her relatives told him she was not available. Two days after the adoption, the father filed notice of claim to paternity. Based on these facts the court held that the representations made by the mother; the fact that the baby was born earlier; and the fact that the father was not a resident of the state, taken together with the biological mother's family efforts to keep him uninformed, made it impossible for the father to assert his parental rights. Id. at 690.

Baby Doe involves markedly different situation than the plaintiff's case. The Utah statute on which the case was decided allowed the biological father to register or file his "Notice of Claim", *any time prior to the adoption proceeding.* The facts of *Baby Doe* demonstrate that the father had no chance to file his claim, because the mother acted contrary to her promise and placed the child for adoption much earlier then the expected birth date. This simply is not the case here. The Minnesota Putative Fathers' Registry allows a father to register at any point before the child is born but no later than 30 days after the birth date. It is true that Katie and her family kept J.R. in dark, but this alone did not make it impossible for him to register. The Minn. Stat. §259.52 is constitutional

because it allows enough safeguards to a putative father to assert his parental rights. The statute itself clearly states that a "... lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." Minn. Stat. §259.52, Subd. 8 (2000). Similarly, the rest of the case law cited by the plaintiff deals with active misrepresentations and conscious efforts of the biological mother to frustrate the putative fathers' attempts to establish relationship with their children. The cases cited do not advance the argument that the Minn. Stat. §259.52 is unconstitutional as applied to the plaintiffs case.

In conclusion this court holds that the Minnesota putative father's registry is not unconstitutional as applied to the facts of this case. J.R. could have protected his parental rights and would have been entitled to a notice of the adoption proceeding if he had mailed the registry form on time. As the Court noted in *Lehr,* "ignorance of the law cannot be sufficient reason for criticizing the law itself." *See Lehr, 463 U.S. at 264.*

B. *Is a denial of J.R. 's right to withhold his consent to the adoption of his child violation of his equal protection rights?*

The plaintiff argues that by denying J.R.'s right to consent to the adoption proceeding, this court would treat him differently than the biological mother and that would violate J.R.'s rights under the Equal Protection clause of the Constitution. The plaintiff bases his argument on *Caban,* a case in which the United States Supreme Court held unconstitutional a New York law allowing unwed mothers, but not unwed fathers, to prevent adoption of their children by withholding their consent. *Caban v. Mohammed, 441* U.S. 380 (1979). In Caban, the statute on it face treated differently

similarly situated people (unwed mothers and unwed fathers). There is no basis for such a claim in the case at bar.

The Minnesota putative fathers' registry is designed to strike a fine balance between protection of a newborn child's interest of having permanent home and the putative father's right to establish parent-child relationship with the newborn. As the Supreme Court in *Lehr* held the
statute:

> "... is intended to establish procedures for adoptions. Those procedures are designed to promote the best interests of the child, protect the rights of the interested parties, and ensure promptness and finality. To serve those ends, the legislation guarantees to certain people the right to veto an adoption and the right to prior notice of any adoption proceeding. The mother of an illegitimate child is always within that favored class, but only certain putative fathers are included." *See Lehr, 463 U.S. at* 266.

In *Lehr,* the Supreme Court rejected the putative father's argument that his equal protection rights under the Constitution were violated. J.R., the plaintiff in this case, relies heavily on *Caban for* support of his equal protection violation claim. However, The United States Supreme Court distinguished *Caban from Lehr. In Caban, the* father has participated in the rearing of his children, while in *Lehr,* the father had never had a single contact with his child. The Court finally held that, "If one parent has an established custodial relationship with the child and the other parent has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a state from according the two parents different legal rights." Icy at 267-68.

This court finds that the facts and the reasoning applied to the *facts of Lehr are more* applicable to the present.

case than the facts of *Caban. In Caban* the question was based on a statute, which on its face, afforded different rights to unwed mothers and unwed fathers. Nothing in the present case suggests that the statute itself is unconstitutional. It is also evident that, as in *Lehr, J.R.* did not establish any custodial, personal or financial relationship with his daughter. Moreover, since J.R. had never established a relationship with his child, the Equal Protection Clause does not prevent Minnesota from according Katie and J.R. different legal rights.

IV. THE DEFENDANT BARRED BY THE DOCTRINE OF EQUITABLE ESTOPPEL FROM ASSERTING THAT PLAINTIFF'S REGISTRATION WAS UNTIMELY?

The plaintiff argues that Katie, the defendant in this case, is barred by the doctrine of equitable estoppel and cannot contend that J.R. 's registration was untimely. The equitable estoppel doctrine can be applied by a court at its discretion "to prevent a party from taking unconscionable advantage of his own wrong by asserting his *strict legal rights." Northern Petrochemical Co. v. United States Fire Ins., Co., 277* N.W.2d 408, 410 (Minn. 1979). In order to establish estoppel, a plaintiff " must prove that defendant made presentations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be irreparably harmed if the claim of estoppel is not allowed." Id. Even if in this case it is clear that the plaintiff would be irreparably harmed if his request for estoppel is not allowed, the plaintiffs argument that the equitable estoppel doctrine applies is unconvincing. The plaintiff has not presented evidence that Katie made misleading statements, representations or inducements. She and her family refused to tell J.R. where she was, but there is no evidence that they affirmatively made misleading representations or inducements. The plaintiff was

"stonewalled" and everyone (including Katie herself} refused to tell him where she was staying, but the plaintiff presented no evidence that there was misrepresentation or inducement that made him reasonably rely on the defendant's behavior. *See* discussions *infra Parts II A(a)* and II B.

r.t.j.

MINNESOTA STATUTES ANNOTATED PUBLIC WELFARE AND RELATED ACTIVITIES CHAPTER 259. CHANGE OF NAME, ADOPTION ADOPTION

Current through End of 2001 1st Sp. Sess.

259.52. Putative fathers' adoption registry

Subdivision 1. Establishment of registry; purpose; fees. (a) The commissioner of health shall establish a fathers' adoption registry for the purpose of determining the identity and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 259.49, subdivision l, paragraph (a) or (b), clauses (1) to (7). The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry.

(b) The fathers' adoption registry must contain the following information:

(1) with respect to the putative father, the:

(i) name, including any other names by which the putative father may be known and that he may provide to the registry;

(ii) address at which he may be served with notice of a petition under this chapter, including any change of address;

(iii) social security number, if known;

(iv) date of birth; and

(v) if applicable, a certified copy of an order by a court of another state or territory of the United States adjudicating the putative father to be the father of this child;

(2) with respect to the mother of the child:

(i) name, including all other names known to the putative father by which the mother may be known;

(ii) if known to the putative father, her last address;

(iii) social security number, if known; and (iv) date of birth;

(3) if known to the putative father, the name, gender, place of birth, and date of birth or anticipated date of birth of the child;

***45608** (4) the date that the commissioner of health received the putative father's registration, which is the date the registration s postmarked or the date it was delivered by means other than mail to the address on the registration form; and

(5) other information the commissioner of health determines by rule to be necessary for the orderly administration of the registry.

(c) The commissioner of health shall notify the mother of the child whenever a putative father has registered with the father's adoption registry under this section. Notice shall be sent to the name and address submitted by the putative father under paragraph ;b), clause (2). If no current address for the mother is submitted by the putative father under paragraph (b), clause (2), the commissioner of health shall not notify the mother. The commissioner of health has no independent obligation to locate the mother. the notice shall be mailed within 14 days of the date that the commissioner received the putative father's adoption registration unless a search has been requested under subdivision 2. There shall be no charge to the birth mother for this notice.

(d) The commissioner of health shall set reasonable fees for the use of the registry; however, a putative father shall not be ;barged a fee for registering. Revenues generated by the fee must be deposited in the state government special revenue fund and appropriated to the commissioner of health to administer the fathers' adoption registry.

Subd. 2. Requirement to search registry before adoption petition can be granted; proof of search. No petition for adoption may)e granted unless the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report required under section 259.53, subdivision l, requests that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be he subject of an adoption petition. The search required by this subdivision must be conducted no sooner than 31 days following the)firth of the child. A search of the registry may be proven by the

production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search no registration of a putative father in relation to a child who is or may be he subject of an adoption petition could be located. Certification that the fathers' adoption registry has been searched must be filed with the court prior to entry of any final order of adoption. In addition to the search required by this subdivision, the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report under section 259.53, subdivision 1, may request that the commissioner of health search the registry at any time.

***45609** Subd. 3. Search of registry for child support enforcement purposes. A public authority responsible for child support enforcement that is attempting to establish a child support obligation may request that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a child support obligation. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search, no registration of a putative father in relation to the child could be located. No fee may be ;harped to the public authority for use of the registry.

Subd. 4. Classification of registry data. Data in the fathers' adoption registry, including all data provided in requesting the ,earch of the registry, are private data on individuals, as defined in section 13.02, subdivision 2, and are nonpublic data with respect to data not on individuals, as defined in section 13.02, subdivision 9. Data in the registry may be released to:

(1) a person who is required to search the registry under subdivision 2, if the data relate to the child who is or may be the subject of the adoption petition;

(2) the mother of the child listed on the putative father's registration form who the commissioner of health is required to notify ruder subdivision l, paragraph (c);

(3) a public authority as provided in subdivision 3; or

(4) an attorney who has signed an affidavit from the commissioner of health attesting that the attorney represents the birth mother or the prospective adoptive parents.

A person who receives data under this subdivision may use the data only for purposes authorized under this section or other law.

Subd. 5. Criminal penalty for registering false information. A person who knowingly or intentionally registers false information under this section is guilty of a misdemeanor.

Subd. 6. Who may register. Any putative father may register with the fathers' adoption registry. However, any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to ,7).

Subd. 7. When and how to register. A putative father may register with the department of health before the birth of the child but must register no later than 30 days after the birth of the child. Registrations must be in writing and signed by the putative father. A registration is timely if the date the

registration is postmarked or the date it was delivered by means other than mail to the address specified on the registration form is not later than 30 days after the birth of the child.

Subd. 8. Failure to register. Except for a putative father who is entitled to notice and consent under sections 259.24 and 59.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7:

***45610** (1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of he child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 2600.301, subdivision 1.

A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear aid convincing evidence that:

(i) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within ten days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

Subd. 9. Notice and service for those on fathers' adoption registry who are not otherwise entitled to notice. Any time after conception, an interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, may serve by certified mail a notice to registered putative father, an intent to claim parental rights form, a denial of paternity form, and a consent to adoption form pursuant to subdivision 11. These documents may be served on a putative father in the same manner as a summons is served in other civil proceedings, or, in lieu of personal service, service may be made as follows:

(a) The interested party or that party's attorney shall mail to the putative father, at the address provided to the registry, the copy)f the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form by certified mail, return receipt requested, and shall provide notice of the jurisdiction in which the adoption petition will be filed. The receipt for certified mail must state the name and address of the addressee and the date of mailing and must be attached to the original notice.

(b) The return receipt, when filed with the court, must be attached to the original notice to registered putative father, the intent o claim parental rights form, the denial of paternity

form, and the consent to adoption form and constitutes proof of service.

*45611 (c) The court administrator shall note the fact of service in a permanent record.

Subd.10. Response to notice to registered putative father; limitation of rights for failure to respond and upon filing of denial of paternity. Within 30 days of receipt of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form, the putative father must file a completed intent to claim parental rights form with the court administrator in the county in which the adoption petition will be filed as provided by the petitioner, stating that he intends to initiate a paternity action within 30 days of receipt of the notice to registered putative father in order to preserve the right to maintain an interest in the child and receive notice during the pending adoption proceeding. Failure to initiate a paternity action within 30 days of receipt of the notice to registered putative father does not act as a bar to receiving notice under section 259.49. If good cause is shown, the putative father must be allowed more time to initiate the paternity action. A putative father who files a completed denial of paternity form and consent to adoption form or who fails to timely file an intent to claim parental rights form with the court:

(1) is barred from later bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered a right to notice of a hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights.

Subd.11. Forms. The office of the state court administrator shall develop the following forms:

(1) notice to registered putative father; (2) intent to claim parental rights;

(3) denial of paternity;

(4) consent to adoption; and

(5) notice to registered putative father of the county in which the adoption petition will be filed.

Subd.12. Right to counsel at public expense. Upon proof of indigency, a putative father who has registered with the fathers' adoption registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with e court administrator, must have counsel appointed at public expense.

***45612** Subd.13. Applicability of Indian Child Welfare Act. In an action involving an American Indian child, sections 260.751. to 260.835, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that e provisions of this section are inconsistent with those laws. The public acts, records, and judicial proceedings of any Indian tribe at provide an acknowledgment of paternity or than establish paternity pursuant to tribal law or custom shall be given full faith and edit as provided in United States Code, title 25, section

1911(d). Nothing in this section defeats the right of an Indian father who has acknowledged or established his paternity pursuant to tribal law or custom to commence a paternity proceeding, except that no father may file a paternity proceeding after the entry of a final decree of adoption.

Subd.14. Fees for fathers' adoption registry. The district court administrator in every judicial district shall, in addition to any other filing fees,, assess a $75 adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the fathers' adoption registry. The court administrator shall forward fees collected under this subdivision to the commissioner of finance for deposit into the state government special revenue fund to be appropriated to the commissioner of health to administer the fathers' adoption registry established under this section.

Subd. 15. International adoptions. This section does not apply to international adoptions.

Supreme Court, U.S.
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No. 02-447 (2)

In the Supreme Court of the United States

Dale "J.R." Heidbreder,

Petitioner,

v.

Kathleen Jean Carton, aka Katie Carton, aka Kate Carton,

Respondents,

and

M.J.P. and M.B.P.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSTITION TO PETITION FOR A WRIT OF CERTIORARI

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HIPP

QUESTIONS PRESENTED

I. Whether the Minnesota Supreme Court correctly held, pursuant to established precedent of this Court, in interpreting Minnesota statutes which define the conduct that a putative father must engage in order to demonstrate, or assert, an interest in a child placed for adoption; that the Minnesota statutes did not violate Petitioner's right to procedural due process, where the Minnesota statutes adequately protected Appellant's opportunity to develop or establish a relationship with K.M.C.

II. Whether the Minnesota Supreme Court correctly held, pursuant to established precedent of this Court, in interpreting Minnesota statutes which define the conduct that a putative father must engage in order to demonstrate, or assert, an interest in a child placed for adoption; that the Minnesota statutes did not violate Petitioner's right to equal protection, where the Minnesota statutes distinguished between Petitioner, who had no established relationship with K.M.C. and had taken no steps to establish such a relationship, and Respondent Carton, who had an established custodial relationship with the child.

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CONSTITUTIONAL PROVISIONS AND STATUTES

Relevant Minnesota statutes presented in this case are Minn. Stat. §259.49 and Minn. Stat. §259.52. Due to length, these statutes are presented in full in the Appendix pursuant to Supreme Court Rule 14.1(f).[1]

COUNTER-STATEMENT OF THE CASE

Petitioner brought a paternity action in Stearns County District Court on October 23, 2000, against Respondent/Defendant Katie Carton ("Carton"), seeking an adjudication of the paternity of K.M.C., who was born to Carton on August 12, 2000, in Minnesota, and further seeking to stop the adoption of K.M.C. by Respondent/Intervenors M.J.P. and M.B.P. Respondent/Intervenors M.J.P. and M.B.P., the adoptive parents of the child K.M.C., intervened pursuant to stipulation and brought a motion to dismiss, with prejudice, the action brought by Petitioner. On March 5, 2001, the Honorable Judge Richard Jessen, Stearns County District Court, granted Respondent/Intervenors' motion for summary judgment, and dismissed the paternity action brought by Petitioner. Petitioner appealed this decision to the Minnesota Court of Appeals, which affirmed the decision of the trial court in an unanimous decision issued on December 11, 2001. Petitioner appealed this decision to the Minnesota Supreme Court, which affirmed the decision of the Court of Appeals in an opinion issued on June 13, 2002.

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[1] Petitioner has, in his provision of portions of these statutes in the Petition For A Writ of Certiorari, emphasized or "bolded" portions of the statute, without including any acknowledgement of that fact, thereby providing the misleading appearance that the Minnesota Legislature chose to emphasize portions of the statute. Petitioner's citation and representation of these statutes is incorrect, and Respondents respectfully refer the Court to the full and correct text of the statutes.

A. History Of The Case

In 1999, Petitioner and Carton became involved in a relationship. Carton became pregnant, and notified Petitioner during the first month of her pregnancy. Very early on in the pregnancy, Carton brought up to Petitioner the possibility of placing the child for adoption, and Petitioner indicated he would not support an adoption. During her pregnancy, Carton continued to live primarily with her mother and her siblings, in her family home. Additionally, during her pregnancy, Carton moved to Carthage, Illinois for a period of a couple of weeks, where she lived with family friends, and during this time she did not inform Petitioner where she was.

During Carton's seventh month of pregnancy, Carton and Petitioner moved into an apartment. Carton paid both the security deposit and rent, Petitioner provided no financial support to Carton.[2] Carton lived at that apartment for a period of approximately three (3) weeks.[3] Around this time, Petitioner was aware that Carton's mother and siblings were moving to Minnesota, and that Carton was upset by this fact. After approximately three weeks, in the middle of June 2000

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[2] Petitioner asserts that he "assumed financial responsibility" for the apartment, implying that he provided financial support to Carton during the pregnancy. This statement and Petitioner's assertions in this regard are absolutely incorrect and have no support in the record. Petitioner testified that Carton paid the security deposit and rent on the apartment during the time period in which Carton lived there, and that he provided no financial support to Carton.

[3] Petitioner asserts in the Petition For A Writ of Certiorari that he and Carton moved in together after they learned of the pregnancy, and that they lived together throughout her pregnancy. This assertion is incorrect and has absolutely no support in the record. Petitioner's own testimony stated that they lived together for only a few weeks during the end of May/early June of 2000 during Carton's seventh month of pregnancy. Petitioner's own testimony stated that Carton lived with her mother during the pregnancy, and also that she had gone to Illinois for a time during the pregnancy, during which time he did not know where she was.

Carton moved to Minnesota.[4] Carton did not tell Petitioner where she had gone. Carton first stayed with her grandparents in Minnesota, and then moved to a group home for pregnant teens. At approximately that same timeframe of June 2000, Carton's mother, and siblings, moved to Minnesota as well.

After moving to Minnesota, Carton refused to tell Petitioner where she had gone. When Petitioner asked her, via email, Carton refused to disclose her location. Petitioner testified he believed she had perhaps gone to Illinois. Petitioner asked a few of Carton's friends or family to tell him Carton's location, and they refused as well.[5] Petitioner allegedly consulted an attorney in Iowa, and then did not take any action whatsoever to assert or establish any interest in Carton's child. Despite being on notice that Carton was likely in either Minnesota, Illinois, or Iowa, and despite his own testimony that he believed Carton had probably gone to Illinois, Petitioner did not file or initiate any paternity action, in any state. Petitioner did not register on any paternity or father's registry, despite the fact that such registries are available in Iowa, Illinois and Minnesota. Petitioner did not hire any investigators to attempt to determine Carton's exact location. Petitioner did not begin paying support for the child into any kind of fund or account. By his own admission, for months Petitioner simply waited for Carton to "send [him] papers." Heidbreder v. Carton, 645 N.W.2d 355, 361 (Minn. 2002).

After moving to the home for pregnant teens in Minnesota, Carton decided to place her child for adoption,

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[4] Petitioner asserts that Minnesota allegedly "terminates the rights of the highest percentage of parents in the country." Petition For A Writ of Certiorari, p. 13, n. 9. This statement has no basis in the record, no supporting authority whatsoever, and is irrelevant.

[5] Petitioner asserts that Carton's family and friends lied to him; this statement is not true and is not supported by the record.

and consulted with a licensed adoption agency in Minnesota. The agency advised Carton of the law in Minnesota, that Carton was not required to place any putative father's name upon the child's birth certificate, and further advised her that the child could be adopted if no putative father had registered upon the Minnesota Father's Adoption Registry ("MFAR") within 30 days of the child's birth, see Minn. Stat. §259.52 (provisions of Minnesota Father's Adoption Registry). Carton selected the proposed adoptive parents, Intervenors/Respondents M.B.P. and M.J.P., and two days after the child's birth on August 12, 2000, K.M.C. was discharged from the hospital to their care. K.M.C. has remained with her family since that date, now more than two and one-half years.

On September 12, 2000, 31 days after K.M.C. was born, Petitioner ran into a woman at a gas station who said that Carton had placed her child for adoption in Minnesota. Petitioner then searched the Internet regarding "fathers rights" and in a matter of minutes Petitioner found information on the Minnesota Father's Adoption Registry. He printed out, completed and mailed the registration forms, which were postmarked on the 31st day after the child's birth. Later that evening Petitioner spoke with Carton, who confirmed she had placed the child for adoption in Minnesota.

Subsequently, Petitioner filed a paternity action in Stearns County, Minnesota (where Carton resides) seeking to be adjudicated as the father of K.M.C. and seeking to stop her adoption. Respondents/Intervenors M.J.P. and M.B.P. intervened pursuant to a stipulation between the parties, and brought a motion to dismiss, with prejudice, Petitioner's action. The trial court granted Respondents/Intervenors summary judgment and dismissed Petitioner's paternity action. Petitioner then appealed this decision to the Court of Appeals, which affirmed the trial court's decision in a unanimous published decision issued on December 11, 2001. Petitioner petitioned the Minnesota Supreme Court to grant

certiorari, certiorari was granted and the Minnesota Supreme Court affirmed the decisions of the Court of Appeals and the trial court in a decision issued on June 13, 2002.[6]

The decision of the Minnesota Supreme Court held that (1) Carton's failure to reveal her location did not excuse Petitioner's failure to register upon the MFAR within 30 days of the child's birth, where the language of the statute provided that Petitioner's lack of knowledge regarding the pregnancy or birth was not an excuse; (2) that Carton's failure to disclose her location to Petitioner did not constitute "fraudulent concealment" because Carton owed no fiduciary duty to provide information to Petitioner; (3) Petitioner could not maintain his paternity action based upon a theory that he had "substantially complied" with the statute; (4) the time limit of 30 days after the child's birth contained in Minn. Stat. §259.52 is not a "statute of limitations" that could be tolled by any fraudulent concealment, even if such fraudulent concealment had actually occurred; (5) the doctrines of equitable estoppel and "unclean hands" did not apply to support Petitioner's claims; and (6) Minnesota's statutory scheme concerning what notice of an adoption must be given to putative fathers did not violate either Petitioner's rights to procedural due process or equal protection. Heidbreder, 645 N.W.2d 355.

The decision of the Minnesota Supreme Court was in conformity with the decisions of other state courts which have addressed the level of protection which must be afforded to putative fathers. See, e.g., In Re Petition of K.J.R. and D.F.R. to Adopt O.J.M., a/k/a O.J.K., 687 N.E.2d 113, 117 (Ill. Ct. App. 1997); In Re Paternity of Baby Doe, 734 N.E.2d 281

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[6] Petitioner's blatant mischaracterization of the holding of the Minnesota Supreme Court demands a close reading of the Minnesota Supreme Court's opinion. In particular, contrary to Petitioner's assertions, the Court specifically held that as a matter of law, that there had been no "fraud" and no "fraudulent concealment."

(Ind. Ct. App. 2000); Robert O. v. Russell K., 604 N.E.2d 99 (N.Y. 1992); In Re Adoption of Baby Girl Hudnall, 594 N.E.2d 45 (Ohio Ct. App. 1991); In Re Adoption of Baby Boy Dearing, 648 N.E.2d 57 (Ohio Ct. App. 1994); In Re Raquel Marie X, 559 N.E.2d 418 (N.Y. 1990); Ellis v. Social Servs. Dept. of the Church of Jesus Christ of Latter-Day Saints, 615 P.2d 1250 (Utah 1980); In Re Adoption of Baby Boy Doe, 717 P.2d 686 (Utah 1986).

B. Relevant Statutes

Under Minnesota law, consent to adoption is not required of a parent who is not entitled to notice of the adoption proceedings. Minn. Stat. §259.24, subd. 1(a). Pursuant to Minn. Stat. §259.49, subd. 1(b), notice of an adoption (and therefore, consent of that parent) is required for seven categories of parents: those parents who appear on the child's birth certificate; who substantially support the child; who are married to the child's mother within 325 days prior to the child's birth or within ten days after the child's birth; who is openly living with the child or mother; who has been adjudicated as the child's parent; who files a paternity action within 30 days after the child's birth and the action is still pending; or who signs a recognition of parentage pursuant to Minn. Stat. §257.75. Minn. Stat. §259.49, subd. 1(b)(1)-(7).

For those parents who do not meet any of the above categories, Minnesota law provides a further opportunity to qualify for notice of an adoption, and therefore to gain the status of a parent whose consent is required in order for the child to be adopted, known as the Minnesota Father's Adoption Registry, or "MFAR." The provisions of the MFAR are principally contained in Minn. Stat. §259.52, and are referenced in detail as well in the general notice provisions contained in Minn. Stat. §259.49. Pursuant to Minn. Stat. §259.49, subd. 1(b)(8) and Minn. Stat. §259.52, a putative father may, at any time after a child's conception, register upon the Minnesota Father's Adoption Registry.

Minn. Stat. §259.52, subd. 7.[7] A putative father must, however, register within 30 days of a child's birth. Minn. Stat. §259.52, subd. 7. A putative father who fails to register within 30 days of the child' s birth, is barred thereafter from bringing or maintaining an action to assert any interest in the child during pending adoption proceedings concerning the child; is considered to have waived and surrendered any right to notice of any hearing in any judicial proceedings for adoption of the child; consent of the person to the child's adoption is not required, and is considered to have abandoned the child. Minn. Stat. §259.52, subd. 8.

A putative father who fails to register within the required 30-day period, has yet another remaining option under the statute. Specifically, a putative father may be considered to have timely registered, if he proves, by clear and convincing evidence, that it was "not possible" for him to register within 30 days of the child's birth; his failure to register "was through no fault of his own;" and he registered within ten days after it became possible for him to do so. Minn. Stat. §259.52, subd. 8. Finally, the Minnesota Legislature specifically provided, that a "lack of knowledge

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[7] Petitioner's assertion that Minn. Stat. §259.52 narrowed the time frame in which a putative father could assert an interest in a child, from prior Minnesota law, is also incorrect. Previous law provided that a putative father was able to assert an interest in a child by filing an affidavit with the Department of Health within 60 days of the child's placement with prospective adoptive parents or within 90 days of the child's birth. No registration could occur before birth. Minn. Stat. §259.51 (repealed Minn. Laws 1997, c. 218, §13). This statute was replaced with Minn. Stat. §259.52, which allows a putative father to assert an interest in a child by registering upon the Registry at any time from before birth up until 30 days after the child's birth – accordingly, giving putative fathers a total of ten months (nine months of pregnancy plus 30 days after birth) in which to assert their interest in a child. Minn. Stat. §259.52, subd. 7. Accordingly, contrary to Petitioner's assertions Minn. Stat. §259.52 actually represents a significant expansion in the rights of putative fathers from previous Minnesota law.

of the pregnancy or birth is not an acceptable reason for failure to register." Minn. Stat. §259.52, subd. 8.

SUMMARY OF THE ARGUMENT

The Minnesota Supreme Court, in reviewing the grant of summary judgment to Intervenors/Respondents M.J.P. and M.B.P., correctly stated and applied the standard of review applicable to a grant of summary judgment. The Court reviewed the facts in the light most favorable to Petitioner; yet still concluded that Petitioner did not demonstrate a genuine issue of material fact for trial that Petitioner could meet his burden to prove by clear and convincing evidence as required by the statute, that the statutory exception would apply to excuse his untimely registration upon the MFAR.

The Minnesota Supreme Court correctly determined that, in accordance with this Court's holding in Lehr v. Robertson, 463 U.S. 248 (1983) and related cases, Minnesota's statutory scheme relative to putative fathers, principally contained in Minn. Stat. §§259.49 and 259.52, did not violate Petitioner's right to procedural due process; as the statutes adequately protected Petitioner's inchoate interest, or opportunity to form or assert a relationship with the child which would then rise to a level which would receive more substantial protection.

The Minnesota Supreme Court correctly determined that, in accordance with this Court's holding in Lehr v. Robertson, 463 U.S. 248 (1983) and related cases, Minnesota's statutory scheme relative to putative fathers, principally contained in Minn. Stat. §§259.49 and 259.52, did not violate Petitioner's right to equal protection, where the statutes made a distinction between unwed mothers and putative fathers based upon the level of relationship established with the child.

REASONS FOR DENYING THE PETITION

Respondent/Intervenors respectfully request that this Court deny the Petition For A Writ of Certiorari filed by Petitioner Dale Heidbreder, seeking review of the decision of the Supreme Court of the State of Minnesota, entered on June 13, 2001.

I. THE CASE INVOLVES CONSTITUTIONAL RIGHTS WHICH HAVE ALREADY BEEN CLEARLY ESTABLISHED AND SET FORTH IN APPLICABLE UNITED STATES SUPREME COURT PRECEDENT, AND THEREFORE DOES NOT PRESENT ANY NEW OR NOVEL ISSUE FOR REVIEW BY THIS COURT.

Petitioner argues that this Court should accept review of his claims, arguing that this case presents an "important" matter because it involves the legal relationships between a child and her adoptive parents, her biological mother, and a putative father. While there is no doubt that a person's rights with regard to a child are recognized by this Court, and by society, as of the utmost importance, this case does not present any new or novel issues or claims. Rather, this case concerns what Constitutional rights may be claimed by a putative father in regards to the child born to an unwed mother. This Court has already clearly set forth the minimum standards which must exist in a State's statutes in order for those statutes to pass constitutional muster in regards to the rights of a putative father, see, e.g., Lehr v. Robertson, 463 U.S. 248 (1983); Caban v. Mohammed, 441 U.S. 380 (1979), and the Minnesota statutes at issue in this case provided even greater protection than that which is required by this Court's precedent.

Accordingly, while this case undoubtedly involves significant societal and human relationships, the legal protections accorded those relationships have been well

established by this Court, the Minnesota Supreme Court correctly held that those legal protections are more than adequately provided by the Minnesota statutes at issue, and there are no important or novel questions to be addressed by this Court in this case.

The Minnesota statutes contained in Minn. Stat. §§ 259.49 and 259.52, represent a comprehensive system to provide notice, and substantive rights, to those putative fathers who have taken the responsibility to assert, and demonstrate, some interest in a child. These statutes, while providing a mechanism for identifying putative fathers and giving them notice of adoption proceedings, balance the putative father's interests with those of the child, the birth mother, and the adoptive parents, and also "serve the interests of the child and adoptive parents by establishing a clear cut-off date after which there is little risk that a putative father who failed to timely register and is not otherwise entitled to notice can disrupt the adoptive placement." Heidbreder, 645 N.W.2d at 369.

The Minnesota Supreme Court held that in enacting Minn. Stat. §259.52, the legislature "decided that a putative father must act promptly to assert" an interest in a child, and that at some point a "putative father's interest in knowing and raising his child gives way to the child's interest in having a permanent and stable home." Id. at 370. As this Court is bound by the construction given to the statutes by the Minnesota court, R.A.V. v. City of St. Paul, 505 U.S. 377, 381 (1992), the determinations by the Minnesota Supreme Court of the purpose, effect, and policy behind the Minnesota statutes relative to adoption, are as set forth in Heidbreder v. Carton, 645 N.W.2d 355.

II. THE MINNESOTA SUPREME COURT CORRECTLY APPLIED THE LAW, IN REVIEWING THE FACTS IN THE LIGHT MOST FAVORABLE TO PETITIONER, AND ACCORDINGLY THERE HAS BEEN NO ERROR WHICH WOULD REQUIRE CORRECTION BY THIS COURT.

Petitioner argues that the trial court misapplied the law, by claiming the Minnesota Supreme Court failed to view the facts in the light most favorable to Petitioner upon his appeal of the grant of summary judgment to Respondents. Under Minnesota law, summary judgment is appropriate when the "evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact" for trial, and the moving party "is entitled to judgment as a matter of law." Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 672 (Minn. 2001).

Petitioner argues that the Minnesota courts erred and failed to view the facts in the light most favorable to his case. However, in reality, the courts did view the facts in the light most favorable to Petitioner. The courts' application of the correct standard, in viewing the facts in the light most favorable to Petitioner, is seen throughout the Minnesota Supreme Court opinion, and will not be repeated unnecessarily herein. However, significant instances of the Minnesota Supreme Court viewing the facts in the light most favorable to Petitioner are noted as follows: the Minnesota court assumed that Carton did, in fact, make a promise to Petitioner during their discussion of adoption early in Carton's pregnancy; the Minnesota court took as true Petitioner's assertions that he occasionally paid for meals for Carton; that Carton's relationship with her mother was strained, that Carton had told Petitioner she would not move to Minnesota with her mother; despite Carton's testimony that she left Petitioner because they argued, the court took as true Petitioner's assertion that he did not know why Carton left but

that she was "scared and confused;" the court took as true Petitioner's assertions that Carton's family and friends refused to tell him Carton's location when he asked; that he never considered the possibility that Carton was in Minnesota due to Carton's relationship with her mother; and that an Iowa attorney told him that K.M.C. could not be adopted in Iowa without his consent. Heidbreder, 645 N.W.2d at 360-61.

All facts, and inferences, were taken and viewed in the light most favorable to Petitioner by the Minnesota court. This is clear from a reading of the Minnesota Supreme Court's decision. Ultimately, however, what Petitioner doesn't understand, is the distinction that, even when all the facts and inferences were taken or viewed in the light most favorable to Petitioner, the conclusion was still that Petitioner did not meet his burden. Specifically, to avoid summary judgment, Petitioner was required to demonstrate a genuine issue of material fact as to whether he could prove, under the "clear and convincing evidence" standard required by the applicable statutes, that it was "not possible" for him to register within 30 days of K.M.C.'s birth as required by Minn. Stat. §259.52. The Minnesota Supreme Court's conclusion, that even when the facts were viewed in the light most favorable to Petitioner, Petitioner had not met that burden, results from a proper application of the law to this case.

Petitioner simply does not understand that the conclusion of the court can still be against him, even when the facts are viewed in the light most favorable to his claims. Ultimately, Petitioner seeks to have this Court re-examine the facts, and reverse the decision of the Minnesota Supreme Court to find in his favor. As this Court has long stated, the Supreme Court does "not grant a certiorari to review evidence and discuss particular facts," United States v. Johnson, 268 U.S. 220, 227 (1925), for "certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases." Watt v. Alaska, 451 U.S. 259, 275, n.5 (1981) (Stevens, J., concurring). There is simply no

compelling reason for this Court to grant review to accommodate Petitioner's belief that the conclusion must also be in his favor when the facts are viewed in his favor.

III. THE HOLDING OF THE MINNESOTA SUPREME COURT, THAT THE MINNESOTA STATUTES DID NOT VIOLATE ANY PROCEDURAL DUE PROCESS RIGHT HELD BY PETITIONER, IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT AND DOES NOT PRESENT ANY ISSUE FOR REVIEW BY THIS COURT.

Petitioner argues that the Minnesota Supreme Court decided his case in a manner that conflicts with precedent of this Court. This Court has already clearly set forth the levels of procedural due process protection which inure to unwed fathers in relation to potential biological children. Pursuant to these rulings, the Minnesota Supreme Court correctly held that the Minnesota statutes at issue more than adequately provided the required level of procedural due process protection. Petitioner's argument is based upon both a misunderstanding of the case law, and a misunderstanding of Petitioner's constitutional rights, and further is, in reality, based upon Petitioner's attempt to obtain United States Supreme Court review of the Minnesota court's holdings regarding the facts of the case.

Petitioner claims a liberty interest, subject to due process protection, by virtue of his relationship as a potential biological father of K.M.C. Petitioner claims that the decision of the Minnesota Supreme Court, violated this Constitutional right. However, as this Court has clearly stated, the actual relationship between an unwed parent, and a child, is critical in determining the level of protection afforded by the due process clause. Lehr, 463 U.S. at 261. Where an "unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to

participate in the rearing of his child,'" then his interest in the child acquires "substantial protection under the due process clause." Lehr, 463 U.S. at 261 (citing Caban, 441 U.S. at 392). However, the "mere existence of a biological link does not merit equivalent constitutional protection." Id. (emphasis added). Rather, the

> significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie.

Lehr, 463 U.S. at 262. As the Lehr Court quoted, "[p]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." Lehr, 463 U.S. at 260.

Accordingly, where a court is not asked to assess the adequacy of a state's procedure for terminating a developed relationship with a child, the question then is whether the State adequately protected a putative father's opportunity to form such a developed or established relationship which would have acquired substantial due process protection. Lehr, 463 U.S. at 262-63. As this Court has noted, if a State's statutory scheme were "likely to omit many responsible fathers, and if qualification for notice were beyond the control of an interested putative father," then the State's statutory scheme "might be thought procedurally inadequate." Lehr, 463 U.S. at 264.

Petitioner claims that the facts of his case show that he demonstrated the required "commitment" under Lehr and Caban, such that he therefore is entitled to the full level of substantial due process protection. Petitioner claims on this basis that it was error for the Minnesota courts to apply to him, the holding of Lehr relative to putative fathers who have not demonstrated the required level of "commitment" to acquire more substantial due process protection.

However, it is clear that to the contrary, the Minnesota Supreme Court correctly held that Petitioner never established a custodial, personal or financial relationship with K.M.C. which would have entitled Petitioner to more substantial due process protection under Lehr. Even viewing the facts in the light most favorable to Petitioner, as required in reviewing a grant of summary judgment, it is clear that Petitioner did not establish a relationship with K.M.C. which was entitled to more significant due process protection. Petitioner never had a custodial right to K.M.C., and never even asserted any interest in custody of K.M.C. until months after her birth and after he learned K.M.C. had been placed for adoption. There is no evidence in the record that would support any conclusion that Petitioner had a personal relationship with K.M.C., and Petitioner never provided any financial support to Carton during her pregnancy, and never even attempted to provide support to K.M.C. upon her birth, such as by placing funds for K.M.C. in a separate account or otherwise indicating any attempt whatsoever to support K.M.C.[8] Heidbreder, 645 N.W.2d at 372-73. Furthermore, Petitioner never engaged in any efforts to establish any legal relationship with the child, as he failed to file a paternity action or register upon a paternity registry in any state; Petitioner acted only after learning K.M.C. had been placed for adoption.

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[8] Again, Petitioner's assertions that he provided financial or other support to Carton are misrepresentations, and are unsupported by the record.

Petitioner further argues that Minnesota Supreme Court erred in holding he had not 'grasped the opportunity' to establish a protected relationship, based principally upon his claims that it was not "reasonable" to expect him to investigate his options under Minnesota law when he lived in Iowa all his life. However, as described above, the Minnesota court correctly viewed the facts in the light most favorable to Petitioner. Even taking all Petitioner's assertions as true, the Minnesota court still reached the conclusion that Petitioner had notice of at least the possibility that Carton was in Minnesota. Furthermore, as the Minnesota Supreme Court held, Petitioner could have filed a paternity action in any state, which would have protected his interest under Minn. Stat. §259.49, and further would at least support a claim that he had demonstrated the required level of commitment and attempt to grasp the opportunity to become a legal parent to K.M.C. Heidbreder, 645 N.W.2d at 375. Even viewing the facts in the light most favorable to Petitioner, the Minnesota Supreme Court's conclusion, that Petitioner did not establish a relationship with K.M.C. which would entitle him to substantial due process protection under Lehr, is correct.

Accordingly, as Petitioner did not have an established relationship with K.M.C., as the Minnesota Supreme Court correctly noted, Heidbreder, 645 N.W.2d at 374, n.13, then the issue under Lehr is whether the entire Minnesota statutory scheme relative to putative fathers and adoption adequately protected Petitioner's inchoate interest - his opportunity to form such a protected relationship which would become entitled to more substantial due process protection. In reviewing this issue, this Court is bound by the construction given to the statutes by the Minnesota court. R.A.V., 505 U.S. at 381.

Minnesota's statutory scheme contained at Minn. Stat. §§259.49 and 259.52, provides eight (8) categories of putative fathers with the right to notice of an adoption. Those categories provide notice to those putative fathers who have

taken some action which demonstrates, to the world at large, an interest in the child – such as putative fathers who are living with the child or mother, supported the child, or initiated a paternity action within 30 days of the child's birth. See Minn. Stat. §259.49, subd. 1(b)(1)-(7). Further, the statutes provide opportunities for a putative father to assert an interest in a child and become entitled to notice of an adoption, absolutely independently of any actions by the biological mother. See Minn. Stat. §259.49, subd.1(b)(6) (putative father who files a paternity action within 30 days of child's birth); Minn. Stat. §259.52 (providing Minnesota Father's Adoption Registry).

As the statutes at issue represent protection of categories of putative fathers, which categories are similar to those upheld in Lehr, the statutes pass constitutional muster under Lehr. Petitioner attempts to distinguish Lehr, and accordingly tries to claim that he presents a 'new' issue, by arguing that the statutes are unconstitutional as applied to him by virtue of the fact that he was an Iowa resident. Significantly, however, a putative father who initiated a paternity action in any state within 30 days of the child's birth, would have protected his interest in the child, and become entitled to notice of an adoption under the Minnesota statutes. Heidbreder, 645 N.W.2d at 375. Furthermore, pursuant to Minn. Stat. §259.52 and Minn. Stat. §259.49, subd. 1(b)(8), a putative father who registers upon the MFAR within 30 days of the child's birth, and takes the required steps after registration, acquires the right to notice of a child's adoption completely independently, irregardless of a biological mother's wishes.

As the Minnesota Supreme Court held, the statutory scheme at issue in this case, as represented by Minn. Stat. §§259.49 and 259.52, is not "likely to omit many responsible fathers", even those who live outside of Minnesota, and, further, "qualification for notice [is] not beyond the control of an interested putative father" living outside the state of

Minnesota. Heidbreder, 645 N.W.2d at 375 (quoting Lehr, 463 U.S. at 264). Minnesota's statutory scheme – which is virtually identical to the statutes upheld by this Court in Lehr – adequately protected Petitioner's inchoate interest, his "opportunity" to form a relationship with K.M.C. which would have entitled him to more substantial due process protection. There is no conflict with this Court's decision in Lehr and related cases, rather Petitioner simply failed to avail himself of any of opportunities available to him, and now complains of the results of his own inaction. This complaint does not present a significant constitutional question for this Court.

IV. THE DECISION BY THE MINNESOTA SUPREME COURT, THAT THE MINNESOTA STATUTES DID NOT VIOLATE ANY RIGHT TO EQUAL PROTECTION HELD BY PETITIONER, IS NOT IN CONFLICT WITH ANY DECISION OF THIS COURT AND DOES NOT PRESENT ANY ISSUE FOR REVIEW BY THIS COURT.

Petitioner claims that Minnesota's statutes, by requiring Carton's consent to an adoption of her child K.M.C. but not requiring that notice be given to Petitioner as a putative father, violates Petitioner's rights to Equal Protection. Petitioner's claim is without merit, and the Minnesota Supreme Court correctly concluded that equal protection did not require that Petitioner, a putative father, be given the same legal rights with regard to K.M.C.'s adoption as K.M.C.'s biological mother.

It is well-established that, where one parent "has an established custodial relationship" with a child, and where the other parent "has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a state from according the two parents different legal rights." Lehr, 463 U.S. at 268. In this case, as the biological mother,

Carton had an established custodial (and legal) relationship with the child K.M.C. In contrast, Petitioner did not have any established relationship with K.M.C., and he failed to avail himself of the various opportunities available to him to establish such a protected relationship.

As the Minnesota Supreme Court found, Petitioner had opportunities to establish a sufficient commitment to the child, such that he would have been entitled to constitutional protection, even if he did not meet the technical requirements of registering upon the MFAR within the one portion of the statutes. Petitioner could have commenced a paternity action in any of the three states in which he had notice Carton might be located – Iowa, Illinois, or Minnesota. This would have protected his rights under Minnesota law, and would further have demonstrated a relationship with, or interest in, the child which would at least have supported his claim that he possessed an interest entitled to equal protection. Petitioner could have registered with the registries which were available in Minnesota, in Illinois and in Iowa. Again, such an action would at least have demonstrated that Petitioner attempted to establish a relationship or assert an interest in the child, which would have at least supported his claim that he possessed an interest entitled to equal protection. Where Petitioner failed to take any steps, which would have established any legally cognizable interest or relationship in regards to K.M.C., he failed to establish any "relationship" with K.M.C. which would have entitled him to constitutional protections on the level accorded to K.M.C.'s biological mother.

Where Petitioner failed to take any steps to establish a relationship with K.M.C. – instead by his own admission he simply waited for someone to send him papers – the Minnesota Supreme Court correctly held that it did not violate equal protection to treat Carton, who had an established relationship with the child, differently from Petitioner, a putative father who took no steps to establish any relationship or assert any interest in the child. This conclusion was not in

conflict with any precedent of this Court – in fact, this conclusion is squarely within the holdings of relevant decisions, including both Lehr and Caban, as Petitioner failed to establish or demonstrate any "commitment" or sufficient relationship which would grant him any significant level of constitutional protection.

CONCLUSION

For these reasons, the Petition For A Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX INDEX

1. Minn. Stat. § 259.49..... RA-1

2. Minn. Stat. § 259.52..... RA-3

259.49. Notice, Hearing on Petition

Subdivision 1. To whom given. Except as provided in subdivision 3 and subject to section 259.52, notice of the hearing upon a petition to adopt a child must be given to:

(a) the guardian, if any, of a child;

(b) the parent of a child if:

(1) the person's name appears on the child's birth record, as a parent;

(2) the person has substantially supported the child;

(3) the person either was married to the person designated on the birth record as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth;

(4) the person is openly living with the child or the person designated on the birth record as the natural mother of the child, or both;

(5) the person has been adjudicated the child's parent;

(6) the person has filed a paternity action within 30 days after the child's birth and the action is still pending;

(7) the person and the mother of the child have signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked or a recognition of parentage under section 257.75, which has not been revoked or vacated; or

(8) the person:

(i) is not entitled to notice under clauses (1) to (7);

(ii) has registered with the fathers' adoption registry;

(iii) after receiving a fathers' adoption registry notice, has timely filed an intent to retain parental rights with entry of appearance form under section 259.52; and

(iv) within 30 days of receipt of the fathers' adoption registry notice has initiated a paternity action, unless, for good cause shown, he is unable to do so within the 30 days; a paternity action must be initiated by the putative father in district court; application to the public authority for paternity establishment services does not constitute initiation of an action; and

(c) the child's tribe pursuant to section 260.761, subdivision 3, if the child is an Indian child.

Notice under this section need not be given to a person listed in this subdivision whose parental rights have been terminated. The notice of the hearing may be waived by a parent, guardian, or other interested party by a writing executed before two competent witnesses and duly acknowledged. The waiver must be filed in the adoption proceedings before the matter is heard.

Subd. 2. Service. Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, in the manner provided by law for the service of a summons in a civil action. If personal service cannot be made, the court may order service by publication. The petitioner or petitioner's attorneys shall make an affidavit setting forth the effort that was made to locate the parents, and the names and addresses of the known kin of the child. If satisfied that the parents cannot be served personally, the court shall order three weeks published notice to be given, the last publication

to be at least ten days before the time set for the hearing. Where service is made by publication the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court shall consider that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. Service, guardian only. Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

Amended by Laws 1997, c. 218, § 8; Laws 1998, c. 382, art. 2, § 3, eff. April 21, 1998; Laws 1999, c. 139, art. 4, § 2; Laws 2001, 1st Sp., c. 9, aft. 15, § 32.

259.52. Putative fathers' adoption registry

Subdivision 1. Establishment of registry; purpose; fees. (a) The commissioner of health shall establish a fathers' adoption registry for the purpose of determining the identity and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice under section 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption

proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry.

(b) The fathers' adoption registry must contain the following information:

(1) with respect to the putative father, the:

(i) name, including any other names by which the putative father may be known and that he may provide to the registry,

(ii) address at which he may be served with notice of a petition under this chapter, including any change of address;

(iii) social security number, if known;

(iv) date of birth; and

(v) if applicable, a certified copy of an order by a court of another state or territory of the United States adjudicating the putative father to be the father of this child;

(2) with respect to the mother of the child:

(i) name, including all other names known to the putative father by which the mother may be known;

(ii) if known to the putative father, her last address;

(iii) social security number, if known; and

(iv) date of birth;

(3) if known to the putative father, the name, gender, place of birth, and date of birth or anticipated date of birth of the child;

(4) the date that the commissioner of health received the putative father's registration, which is the date the registration is postmarked or the date it was delivered by means other than mail to the address on the registration form; and

(5) other information the commissioner of health determines by rule to be necessary for the orderly administration of the registry.

(c) The commissioner of health shall notify the mother of the child whenever a putative father has registered with the father's adoption registry under this section. Notice shall be sent to the name and address submitted by the putative father under paragraph (b), clause (2). If no current address for the mother is submitted by the putative father under paragraph (b), clause (2), the commissioner of health shall not notify the mother. The commissioner of health has no independent obligation to locate the mother. The notice shall be mailed within 14 days of the date that the commissioner received the putative father's adoption registration unless a search has been requested under subdivision 2. There shall be no charge to the birth mother for this notice.

(d) The commissioner of health shall set reasonable fees for the use of the registry; however, a

putative father shall not be charged a fee for registering. Revenues generated by the fee must be deposited in the state government special revenue fund and appropriated to the commissioner of health to administer the fathers' adoption registry.

Subd. 2. Requirement to search registry before adoption petition can be granted; proof of search. No petition for adoption may be granted unless the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report required under section 259.53, subdivision 1, requests that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of an adoption petition. The search required by this subdivision must be conducted no sooner than 31 days following the birth of the child. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the fathers' adoption registry has been searched must be filed with the court prior to entry of any final order of adoption. In addition to the search required by this subdivision, the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report under section 259.53, subdivision 1, may request that the commissioner of health search the registry at any time.

Subd. 3. Search of registry for child support enforcement purposes. A public authority responsible for child support enforcement that is attempting to establish a child support obligation may request that the commissioner of health search the registry to determine whether a putative

father is registered in relation to a child who is or may be the subject of a child support obligation. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search, no registration of a putative father in relation to the child could be located. No fee may be charged to the public authority for use of the registry.

Subd. 4. Classification of registry data. Data in the fathers' adoption registry, including all data provided in requesting the search of the registry, are private data on individuals, as defined in section 13.02, subdivision 2, and are nonpublic data with respect to data not on individuals, as defined in section 13.02, subdivision 9. Data in the registry may be released. to:

(1) a person who is required to search the registry under subdivision 2, if the data relate to the child who is or may be the subject of the adoption petition;

(2) the mother of the child listed on the putative father's registration form who the commissioner of health is required to notify under subdivision 1, paragraph (c);

(3) a public authority as provided in subdivision 3; or

(4) an attorney who has signed an affidavit from the commissioner of health attesting that the attorney represents the birth mother or the prospective adoptive parents.

A person who receives data under this subdivision may use the data only for purposes authorized under this section or other law.

Subd. 5. Criminal penalty for registering false information. A person who knowingly or intentionally

registers false information under this section is guilty of a misdemeanor.

Subd. 6. Who may register. Any putative father may register with the fathers' adoption registry. However, any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7).

Subd. 7. When and how to register. A putative father may register with the department of health before the birth of the child but must register no later than 30 days after the birth of the child. Registrations must be in writing and signed by the putative father. A registration is timely if the date the registration is postmarked or the date it was delivered by means other than mail to the address specified on the registration form is not later than 30 days after the birth of the child.

Subd. 8. Failure to register. Except for a putative father who is entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7:

(1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 260C.301, subdivision 1.

A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear and convincing evidence that:

(i) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within ten days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

Subd. 9. Notice and service for those on fathers' adoption registry who are not otherwise entitled to notice. Any time after conception, an interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, may serve by certified mail a notice to registe'ed putative father, an intent to claim parental rights form, a denial of paternity form, and a consent to adoption form pursuant to subdivision 11. These documents may be served on a putative father in the same manner as a summons is served in other civil proceedings, or, in lieu of personal service, service may be made as follows:

(a) The interested party or that party's attorney shall mail to the putative father, at the address provided to the registry, the copy of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form by certified mail, return receipt requested, and shall provide notice of the jurisdiction in which the adoption petition will be filed. The receipt for certified mail must state the name and address of the addressee and the date of mailing and must be attached to the original notice.

(b) The return receipt, when filed with the court, must be attached to the original notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form and constitutes proof of service.

(c) The court administrator shall note the fact of service in a permanent record.

Subd. 10. Response to notice to registered putative father; limitation of rights for failure to respond and upon filing of denial of paternity. Within 30 days of receipt of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form, the putative father must file a completed intent to claim parental rights form with the court administrator in the county in which the adoption petition will be filed as provided by the petitioner, stating that he intends to initiate a paternity action within 30 days of receipt of the notice to registered putative father in order to preserve the right to maintain an interest in the child and receive notice during the pending adoption proceeding. Failure to initiate a paternity action within 30 days of receipt of the notice to registered putative father does not act as a bar to receiving notice under section 259.49. If good cause is shown, the putative father

must be allowed more time to initiate the paternity action. A putative father who files a completed denial of paternity form and consent to adoption form or who fails to timely file an intent to claim parental rights form with the court:

(1) is barred from later bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered a right to notice of a hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights.

Subd. 11. Forms. The office of the state court administrator shall develop the following forms:

(1) notice to registered putative father;

(2) intent to claim parental rights;

(3) denial of paternity;

(4) consent to adoption; and

(5) notice to registered putative father of the county in which the adoption petition will be filed.

Subd. 12. Right to counsel at public expense. Upon proof of indigency, a putative father who has registered with the fathers' adoption registry, has received a notice to

registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, must have counsel appointed at public expense.

Subd. 13.Applicability of Indian Child Welfare Act. In an action involving an American Indian child, sections 260.751 to 260.835, and the Indian Child welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws. The public acts, records, and judicial proceedings of any Indian tribe that provide an acknowledgment of paternity or that establish paternity pursuant to tribal law or custom shall be given full faith and credit as provided in United States Code, title 25, section 1911(d). Nothing in this section defeats the right of an Indian father who has acknowledged or established his paternity pursuant to tribal law or custom to commence a paternity proceeding, except that no father may file a paternity proceeding after the entry of a final decree of adoption.

Subd. 14. Fees for fathers' adoption registry. The district court administrator in every judicial district shall, in addition to any other filing fees, assess a $75 adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the fathers' adoption registry. The court administrator shall forward fees collected under this subdivision to the commissioner of finance for deposit into the state government special revenue fund to be appropriated to the commissioner of health to administer the fathers' adoption registry established under this section.

Subd. 15. International adoptions. This section does not apply to international adoptions.

Laws 1997, c. 218, § 9. Amended by Laws 1998, c. 354, §§ I to 7, eff. April 4, 1998; Laws 1998, c. 382, art. 2, §§ 4 to 14,

eff. April 21, 1998; Laws 1999, c. 122, §§ 1 to 6; Laws 1999, c. 139, art. 4, § 2.